

10-7-2014

# Walco, Inc. v. County of Idaho Clerk's Record v. 7 Dckt. 42296

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In the Supreme Court of the State of Idaho	
Walco Inc.	
Plaintiff	and
Appellant	
vs.	
County of Idaho, and	
Simmons Sanitation Service, Inc.	
Defendants	and
Respondents	
Appealed from the District Court of Second Judicial District for the State of Idaho, in and for Idaho County	
Hon. John Stegner District Judge	
Dennis Charney	
Attorney for Appellant	
Bentley Stromberg (Idaho County)	
David Risley (Simmons Sanitation)	
Attorney for Respondent	
Filed this day of , 20	
42296 Clerk	
By	Deputy

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IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:55 O'CLOCK P.M.

DOCKETED

DEC - 9 2013

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CLERK OF DISTRICT COURT  
DEPUTY

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and SIMMONS  
SANITATION SERVICE, INC., an Idaho  
Corporation,

Defendants.

CASE NO. CV2013-42360

JOINDER OF DEFENDANT SIMMONS  
SANITATION SERVICE, INC. IN  
DEFENDANT IDAHO COUNTY'S  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S CROSS-MOTION FOR  
SUMMARY JUDGMENT

RISLEY LAW OFFICE, PLLC  
LEWISTON, IDAHO

COMES NOW, Defendant SIMMONS SANITATION SERVICE, INC., an Idaho  
Corporation, by and through its attorney of record, David R. Risley of Risley Law Office, PLLC,  
and joins in Defendant Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion  
for Summary Judgment dated December 6, 2013.

JOINDER—Page 1

n/c/plead/msj—pltfscrossmotion—joinder—nhh

11178

1 DATED this 6<sup>th</sup> day of December, 2013.

2 RISLEY LAW OFFICE, PLLC  
3 Attorney for Defendant Simmons Sanitation Service, Inc.

4  
5 By: 

6 DAVID R. RISLEY  
7 ISB NO. 1789

8 CERTIFICATE OF MAILING

9 I certify that on December 6, 2013, at my direction, the foregoing *Joinder by Defendant*  
10 *Simmons Sanitation Service, Inc. In Defendant Idaho County's Memorandum in Opposition to*  
11 *Plaintiff's Cross-Motion for Summary Judgment* was served on the following in the manner shown:

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19  
20  
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25

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:14 O'CLOCK P.M.

DEC 16 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

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*Attorneys for Defendant Idaho County*

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO**

WALCO, INC., an Idaho corporation,

Plaintiff,

vs.

COUNTY OF IDAHO, a political  
subdivision of the State of Idaho;

and

SIMMONS SANITATION SERVICE,  
INC., an Idaho corporation,

Defendants.

Case No. CV-2013-42360

**DEFENDANT IDAHO COUNTY'S  
REPLY TO WALCO'S OPPOSITION  
TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

## I. INTRODUCTION

Walco's Complaint raised two causes of action against Idaho County: (1) tortious interference with prospective economic expectancy; and (2) misappropriation of trade secrets. Idaho County moved for summary judgment on both causes of action. In response, Walco withdrew its tortious interference claim and specified that the sole alleged trade secrets at issue were its "bid price" and "bid."

Walco's trade secrets claim should be dismissed. First, bids are not trade secrets under the Restatement of Torts, and they are dissimilar from the types of business information Idaho's statute classifies as trade secrets. Second, no trade secret existed during the period Walco claims misappropriation, i.e., after the public opening of the proposals at 3:00 p.m. on October 15, 2012. Third, Walco has argued that Simmons' proposal and price were not trade secrets.

The Court should also note that Walco, as in its previous brief, misrepresents the record before the Court and makes numerous, citation-free misstatements of fact.

## II. SUMMARY OF FACTS RELEVANT TO SUMMARY JUDGMENT

Walco claims that its "bid price" and "bid" were trade secrets. (*See* Pl.'s Opp'n to Mot. for Summ. J. (Nov. 29, 2013), at 21.) Walco asserts it made three efforts to maintain the secrecy of its information: (1) sending its June 7, 2012 letter; (2) sealing the envelope containing its proposal; and (3) objecting on and after October 16, 2012 to the proposal review process. (*See id.* at 12, 14, 23.)

Walco does not dispute that the October 15, 2012 meeting at which the proposals were unsealed was a “public” meeting. Walco’s brief in opposition acknowledges the proposals were opened “in a public meeting.” (*See id.* at 4.) And, Walco’s representatives in deposition agreed it was a “public” meeting. (*See* Supplemental Decl. of Counsel (Nov. 15, 2013), Ex. G, at 40:11–14 (deposition of Marietta Holman); *id.* Ex. H, at 5:16–6:16 (deposition of Patrick Holman).)

Instead, Walco asserts its information was misappropriated after the proposals were opened at the public meeting at 3:00 p.m. on October 15, 2012. (*See, e.g.*, Pl.’s Opp’n to Mot. for Summ. J. (Nov. 29, 2013), at 1, 2, 4, 8, 14–15, 26.) Walco does not argue, and no facts suggest, that anyone opened or misappropriated Walco’s RFP response before it was unsealed and opened at the October 15, 2012, public meeting.

### III. ARGUMENT

The parties agree that Walco must prove that a “trade secret,” as defined under Idaho law, “actually existed.” *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 897, 243 P.3d 1069, 1085 (2010); *see also Basic Am., Inc. v. Shatila*, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999) (“Without a proven trade secret there can be no misappropriation, even if the defendants’ action was wrongful.” (internal quotation marks omitted)); Pl.’s Opp’n to Mot. for Summ. J. (Nov. 29, 2013), at 7. In Idaho, a “trade secret” is

information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade secrets as defined in this subsection are subject to disclosure by a public agency according to chapter 3, title 9, Idaho Code.

Idaho Code § 48-801(5) (emphasis added). Walco claims its “bid” and “bid price” are trade secrets.

**A. Bids Are Not Trade Secrets Under the Restatement of Torts.**

Walco misquotes the Restatement of Torts § 759 to support the proposition that “the amount of [a] bid for a contract” has “long been recognized as trade secrets.” (Pl.’s Opp’n to Mot. for Summ. J. (Nov. 29, 2013), at 7.) The Restatement says the opposite.

Section 759 addresses a different cause of action that is specifically distinguished from a trade secrets claim — i.e., “Procuring Information by Improper Means” — and it expressly states: “Examples of information, other than trade secrets, included in this Section are: the state of one’s accounts, the amount of his bid for a contract . . . and the like.” Restatement (First) of Torts § 759, cmt. b (1939) (emphases added).

Section 757 addresses trade secrets and has been cited by the Idaho Supreme Court in trade secrets cases. *See, e.g., Basic Am.*, 133 Idaho at 735, 992 P.2d at 184. Section 757 expressly excludes bids and bid prices: “[A trade secret] differs from other secret information in a business (*see* § 759) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract . . . .” *Id.* § 757, cmt. b (emphases added).



“Thus, information relating to a single or transitory event, such as a secret bid, or financial data of a nonrecurring nature, is not protected [as a trade secret] under the Restatement.” 14 Am. Jur. Proof of Facts 3d 619 (Originally published in 1991, Database updated Dec. 2013).

The Restatement provides strong authority that Walco’s trade secrets claim is non-existent, not “long recognized.” The Idaho Supreme Court has endorsed reliance upon § 757 in defining a trade secret even after enactment of the Idaho statute:

Courts in Uniform Trade Secrets Act jurisdictions often apply factors from the Restatement in order to facilitate application of the tests embodied in the statute. “Although all of the Restatement’s factors no longer are required to find a trade secret, those factors still provide helpful guidance to determine whether the information in a given case constitutes ‘trade secrets’ within the definition of the statute.”

*Basic Am.*, 133 Idaho at 735, 992 P.2d at 184 (emphasis added) (*quoting Optic Graphics v. Agee*, 591 A.2d 578, 585 (Md. Ct. Spec. App. 1991)).

If that were not enough, the Court noted further that “[t]he current Restatement definition of ‘trade secret’ is even broader than that incorporated in the Uniform Trade Secrets Act . . . .” *Id.* n.2 (emphasis added). If “the amount or other terms of a secret bid for a contract,” § 757, cmt. b, are not trade secrets under the Restatement, and that definition is broader than the statute’s, then Walco’s claim is subject to dismissal as a matter of law.

The Restatement’s position that bids and bid prices are not trade secrets is supported by the text of the statute, which lists the types of “information” that can constitute a trade secret, which include “a formula, pattern, compilation, program,

computer program, device, method, technique, or process.” See Idaho Code § 48-801(5). These items do not relate to “single or ephemeral events” of a “nonrecurring nature.” See Restatement (First) of Torts § 757, cmt. b (1939); 14 Am. Jur. Proof of Facts 3d 619.

The Court may consider § 757, *Basic American*, and the text of Idaho Code § 48-801(5) sufficient grounds for dismissal now that Walco has identified its alleged trade secrets as its “bid” and “bid price.” But even if it does not, Walco is not entitled to a presumption that these are trade secrets. The Idaho Trade Secrets Act provides a definition of a “trade secret,” under which no information is presumptively a trade secret. Instead, as discussed below, a trade secret does not “exist” until the plaintiff proves it, including by making a credible showing that it maintained the secrecy of its information.

**B. Walco Did Not Make Reasonable Efforts to Maintain the Secrecy of Its Proposal After It Was Opened in Public.**

Under Idaho’s statute, a “trade secret” does not exist unless the plaintiff made “efforts” to “maintain” the secrecy of its allegedly proprietary information. Idaho Code § 48-801(5)(b) (emphasis added).

To “maintain” something requires ongoing action: to “continue [it] without changing” or to “to keep [it] in an existing state (as of repair, efficiency, or validity)” or to “preserve [it] from failure or decline.” See Merriam-Webster Dictionary (emphases added), available at <http://www.merriam-webster.com/dictionary/maintain>.

Walco asserts it made three efforts to “maintain” the secrecy of its “bid” and “bid price”: (1) sending its June 7, 2012 letter; (2) sealing the envelope containing its

proposal; and (3) objecting on and after October 16, 2012 to the proposal review process. (See Pl.'s Opp'n to Mot. for Summ. J. (Nov. 29, 2013), at 12, 14, 23.)

Each of these “efforts” is discussed below, but each must be analyzed in light of the following: Not only does Walco concede the October 15 meeting was public, Walco does not dispute that it knew at the time it prepared and submitted its proposal that it would be opened in public. Idaho County asserted — and Walco has not contradicted — that the County announced on September 11, 2012 that the proposals would be opened and discussed in public on October 15 and October 16. (See Def. Idaho County's Am. Mem. in Supp. of Mot. for Summ. J. (Oct. 31, 2013), at 3–4 (citing Ackerman Decl. ¶ 5; Brandt Decl. ¶ 4; Chmelik Decl. ¶ 4; Rockwell Decl. ¶ 4).) Walco obviously knew where and when to show up on October 15 for the proposal opening. Any “efforts” must be viewed in light of Walco's knowledge that its proposal was to be opened in a public meeting.

1. The June 7, 2012 Letter

Walco's June 7, 2012 letter was sent four months before Walco submitted its proposal on October 12, 2012. The letter withdrew Walco's offer to contract with the County and made a blanket “request that any proprietary information held by the county be retained by the county and treated as exempt under the Publics Records Act.” (Ackerman Decl. Ex. F.)

The letter did not identify any “proprietary information.” (See *id.*) It referred to “information held” in the present tense, i.e., as of June 7, 2012, not all information the

County ever received in the future. (*See id.*) The letter could not have identified information that was not yet in existence.

Walco's proposal made no reference to the June 7 letter; did not accompany its proposal with a letter that repeated its June 7 request; and Walco did not mention the letter on October 12 or 15. Walco knew its proposal would be opened in public and submitted it anyhow. The June 7 letter is completely irrelevant. It cannot have constituted a reasonable effort to maintain the secrecy of Walco's proposal or price after the proposal was opened and discussed in public with Walco's consent.

2. Sealing Its Envelope

Idaho County does not dispute that Walco sealed the envelope in which Walco submitted its proposal. Idaho County, however, does not concede that the seal maintained any secrets after 3:00 p.m. on October 15.

a. *Once the seal is broken, the effort is of no consequence.*

If sealing an envelope constitutes a sufficient effort to maintain secrecy, it only does so until the envelope is unsealed. When the seal is broken, the seal protects nothing. Some other "effort" is necessary to maintain any secret inside. Something inside or on the envelope must further indicate that particular information is proprietary or confidential.

For example, Walco could have placed any proprietary documents or information inside a separate envelope inside the main envelope and stamped it "CONTAINS TRADE SECRETS" or "PROPRIETARY AND CONFIDENTIAL." Then the breaking

of the seal on the outside envelope might not destroy the further effort taken to highlight the existence of secret information inside the envelope. Walco did not stamp any pages or information in any way. Indeed, Walco did not even stamp the main envelope itself. Sealing its envelope did not maintain any secrecy after its envelope was unsealed.

- b. *An envelope submitted to a public agency especially must be marked as containing alleged trade secrets.*

The above analysis is especially applicable when the submitting party knows the envelope will be unsealed in a public meeting by a public entity. As Idaho County argued in greater detail in its opening brief, “the failure to identify information furnished to a state agency as putatively exempt from public disclosure effectively destroys any confidential character it might otherwise have enjoyed as a trade secret.” *SePRO Corp. v. Florida Dep’t of Env’tl. Prot.*, 839 So. 2d 781, 783 (Fla. Dist. Ct. App. 2003).

The trade secret owner who fails to label a trade secret as such, or otherwise to specify in writing upon delivery to a state agency that information which it contends is confidential and exempt under the public records law is not to be disclosed, has not taken measures or made efforts that are reasonable under the circumstances to maintain the information’s secrecy.

*Id.* at 784.<sup>1</sup>

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<sup>1</sup> Walco’s attempt to shift the burden of identifying and maintaining Walco’s trade secrets from itself to Idaho County fails as a matter of law. (*See, e.g.*, Pl.’s Opp’n to Mot. for Summ. J. (Nov. 29, 2013), at 12–14.) Walco has provided no legal authority for the proposition that any party has an obligation to identify another’s unidentified secret information.

Further, the Florida statute Walco cites (*id.* at 24) provides more protection for RFP responses than Idaho’s statute, because it exempts entire RFP responses from disclosure for some number of days, an exemption Idaho does not provide. Idaho Code

This reasoning has particular force in Idaho. The legislature amended the definition of a “trade secret” in the Idaho Trade Secret Act in 1990 when it enacted the public records law to specifically reference the potential public disclosure of trade secrets. *See* Idaho Session Laws 1990, ch. 213, § 68. Idaho Code § 48-801(5), quoted above at pages 3–4, specifically defines a “trade secret” as “subject to disclosure by a public agency” under “chapter 3, title 9, Idaho Code,” the chapter that includes the public records law. Idaho law places holders of alleged trade secrets on as much notice as possible that they must identify and “maintain” the secrecy of any information submitted to a public entity subject to the public records law. Walco failed to do either of these things.

- c. *Walco did nothing after its envelope was unsealed to maintain secrecy.*

After Walco’s envelope was unsealed at the beginning of the 20-minute public meeting on October 15, 2012, Walco did nothing to indicate it believed anything in the unsealed envelope constituted a trade secret. (*See* Ackerman Am. Decl. ¶ 8; Brandt Am. Decl. ¶ 5; Chmelik Am. Decl. ¶ 5; Rockwell Am. Decl. ¶ 5.) As the recording proves beyond dispute, Walco’s representatives, Patrick and Marietta Holman, participated actively without objection as its proposal was unsealed, summarized aloud, photocopied, and discussed with them openly in public. (*See* Decl. of Counsel (Sept. 27, 2013) Ex. A

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§ 9-340D(1) only exempts trade secrets “contained in” proposals — not all “sealed bids and requests for proposals,” as Walco falsely asserts. (*See id.* at 24.)

(recording); *see also* Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 2–9 (transcript).)

The Holmans willingly answered questions revealing details of Walco’s proposal without requesting that further discussions occur in private. They knew immediately that Walco’s base rate was at least apparently \$10,000 higher than Simmons’, and they heard several details about Simmons’ proposal. (*See, e.g.*, Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 4:23–5:3 (revealing Simmons’ proposed tonnage cap to Walco).) They did not ask that Simmons not be given the details about Walco’s proposal that they had just been given about Simmons’ proposal.

Commissioner Brandt twice repeated the September 11 announcement that the Commissioners would discuss the proposals the next day during their regularly scheduled public meeting. (*See id.* at 6:2–4; 8:24–9:8.) The Holmans did nothing to prevent any of Walco’s information from being discussed there. Rather, they agreed to come to the public meeting on October 16. (*Id.* at 9:1.)

Walco did nothing whatsoever on October 15 to maintain the secrecy of anything inside Walco’s unsealed envelope, and that is all that matters: at that moment in time, any alleged trade secret ceased as a matter of law to be a trade secret.

### 3. Walco’s “Process” Arguments On and After October 16

Walco alleges — without record citation — that it “asserted that [its] total bid price had been misappropriated because Simmons had not yet actually quoted a total bid as Walco had done.” (*See* Pl.’s Opp’n to Mot. for Summ. J. (Nov. 29, 2013), at 14.) But

the earliest possible time that Walco arguably could be considered to have asserted “misappropriation” was at the meeting on October 16, 2012, a day after Walco’s information ceased to be a trade secret.

But at the public meeting on October 16, the Holmans again discussed their proposal, Simmons’ proposal, the parties’ differing views on consolidation, Simmons’ per-ton charge for excess tonnage, fuel surcharges, and more — before ever mentioning vaguely that Simmons’ proposal was “not really a fair bid.” (*See* Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 9–26; *id.* Ex. E at 26:19–23; *id.* Ex. B (at time stamp 20:10).) This was 20 minutes into the meeting on October 16. And, even after that, the Holmans continued to discuss the details of Walco’s proposal. (*See, e.g., id.* Ex. E, at 28:19–29:13.)<sup>2</sup>

Walco provides no record citation for the proposition that it ever attempted to assert the secrecy of its proposal on or after October 16, and the Court should not credit it. Regardless, Walco provides no authority in law or logic for the proposition that post hoc protestations can transform into trade secrets information made public with the party’s consent. One cannot “re-maintain” secrecy; once secrecy is lost, it is lost.

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<sup>2</sup> Indeed, contrary to Walco’s theory that the process was clearly a competitive bid process, the recording reveals that soon after this, Mr. Holman agreed with the County attorney, Kirk MacGregor, that the proposal did not promise to negotiate with “the contractor that was apparent low bidder.” (*See* Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. B (time stamp 23:00 to 23:18); *see also id.* Ex. E, at 29:11–18 (showing slightly incorrectly transcribed discussion).)



This assertion is simply an attempt to fit into a trade secrets framework Walco's claim that Idaho County's "process" effectuated a misappropriation of Walco's base rate so that Simmons could undercut it by quoting a lower fuel surcharge. (See Pl.'s Opp'n to Mot. for Summ. J. (Nov. 29, 2013), at 15.) Walco's claim is flawed both legally and factually.

a. *Walco reverses the relevant legal analysis.*

Walco's "process" argument turns on its head the fundamental rule of trade secrets law stated by the *Basic American* Court: "Without a proven trade secret there can be no misappropriation, even if the defendants' action was wrongful." *Basic Am.*, 133 Idaho at 734, 992 P.2d at 183 (emphasis added) (internal quotation marks omitted). *Basic American* makes plain that public information does not become a trade secret by virtue of its wrongful use. It could not, because as soon as it is public, it is "readily ascertainable by proper means," § 48-801(5)(a), such as by a public records request.<sup>3</sup> Walco's argument reverses the legal analysis and is a proper subject for dismissal on summary judgment.

b. *Undisputed facts show Walco's claim is baseless.*

As Idaho County explained in detail in its brief in opposition to Walco's "cross-motion for summary judgment," this argument is unsustainable because there is no genuine dispute that the base rates were not the only element of the parties' proposed

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<sup>3</sup> Indeed, as discussed below in Part III.C, Walco requested Simmons' proposal by a public records request on October 17, 2012. (See Second Supplemental Ackerman Decl. Nov. 15, 2013) Ex. JJ.)

price. (See Def. Idaho County's Mem. in Opp'n to Pl.'s Cross-Mot. for Summ. J. (Dec. 6, 2013), at 16–17.)

Walco's proposed invariable 5% annual, compounding base rate increase alone eviscerates Walco's argument that Simmons' and Walco's prices were effectively identical or that Walco's was lower. Even if Walco's assertion that Simmons "quoted" or "revealed" his fuel surcharge to be "\$7,900" was true, it would not matter, because the effective first-year base rate was only one aspect of the pricing under evaluation. The effective first-year base rates were not determinative, because it was objectively reasonable to estimate that Walco's price would quickly grow much larger than Simmons' after the first year:

COMMISSIONER ROCKWELL: The five percent, Marietta, over a 10 year period is an increase up to \$141,000 in 10 year contract. That would be your base, the 141,000. So we moved from 87,000 to 141,000 on a five percent required increase. That for me looking at the numbers is a very tough number to get over. It's 60,000 more than what we're looking at today.

MS. HOLMAN: That was the proposal.

(Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 94:5–12.) Walco made its proposal, and it was too expensive.<sup>4</sup>

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<sup>4</sup> Experience has borne this out. Through September 2013, Idaho County paid Simmons a total of \$726,425.41 in base rate and quarterly fuel surcharges. (See Ackerman Decl. ¶¶ 32–33 & Exs. W, X; Supplemental Ackerman Decl. (Oct. 31, 2013) ¶ 6 & Ex. FF.) At Walco's base rate of \$87,000 per month (with no fuel surcharges), the Simmons contract has cost \$56,574.59 less than the Walco contract would have cost for the same period. (Both contracts provided for separate payment for tires, appliances, and tipping fees, so those charges, totaling \$10,878.80, are not included in this comparison.) In particular, Simmons' fuel surcharges for the first nine months of 2013 totaled only \$31,607.41 (see

The reality is that nobody needed to appropriate anything of Walco's for Walco to lose out to Simmons. For this same reason, as Idaho County argued in its opening brief, Walco can have suffered no damages, because everything the Commissioners needed to reject Walco's offer to raise its rate invariably 5% every year was contained in Walco's proposal. Without damages it has no case under the statute. *See* Idaho Code § 48-803.

There is no logical or legal merit to Walco's assertion that post hoc efforts can "maintain" a secret that has already ceased to exist by the party's own consent. Walco cannot meet an essential element of its claim, so it should be dismissed.

**C. Walco Has Argued Simmons' Proposal and Price Were Not Trade Secrets.**

In this case, Walco argues only its proposal and base rate were trade secrets; Simmons' were not. (*See* Compl. ¶ 20.) For the reasons detailed above, neither was, especially as of their public opening with the parties' consent at 3:00 p.m. on October 15, 2012. Walco should be held to its own arguments and actions that contradict its position in this regard.

First, Walco's representative Marietta Holman agreed with Walco's assertion in its Complaint that Simmons' proposal and base rate were not trade secrets. (*See*

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*id.*) — an average of only \$3,511.93 per month and over \$4,300 per month less than the \$7,900 per month Walco asserts Simmons quoted.

Through November 2013, Simmons has collected 3,656.82 tons of solid waste — an average of approximately 332.4 tons per month. (*See* Ackerman Decl. Ex. W, at 16; *id.* Ex. X at 17; Second Supplemental Ackerman Decl. (Nov. 15, 2013) Ex. II; Third Supplemental Ackerman Decl. Ex. XX.) Simmons would have to collect over 950 tons in December 2013 — i.e., nearly triple the average monthly tonnage — to exceed the annual cap provided by its contract and trigger a surcharge.

Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. G, at 21:14–22:5.) If Simmons’ were not, Walco’s were not.

Second, Walco’s representative, Dorothy Walker, requested and received Simmons’ proposal by a public records request on October 17, 2012, two days after the proposals were opened and discussed in public and one day after they were discussed in further detail at the Commissioners’ public meeting. (*See* Second Supplemental Ackerman Decl. Nov. 15, 2013) Ex. JJ.) Walco thus acknowledged by its action that the proposals were in the public domain.

Third, on October 22, 2012, Walco’s attorney argued to the Commissioners that Simmons’ proposal and pricing information was not proprietary:

[T]he matters intended to be secretly discussed with Mr. Simmons are not proprietary in nature.

....

If this information is proprietary th[e]n the county would have opened both bids in executive session, out of public view and would have stated in the bid proposal that information of this nature would be treated as proprietary. Walco submitted all of this information and it was opened for all to see. Why is Mr. Simmons allowed to share information in secret that Walco was required to expose to the public?

(*See* Ackerman Decl. Ex. O, at 2.)<sup>5</sup>

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<sup>5</sup> Simmons did not refuse to give his proposal figures in public. Simmons on October 16 only requested an executive session if required to show “how” he came up with his final numbers: “If you want a total I’ll give it to you. If you want to see how I came up with them I want that in executive session.” (*See* Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 37:1–3 (emphases added).) Mr. Simmons confirmed this in his deposition, and Walco’s counsel even summarized that view to Mr. Simmons. (*See* Second Supplemental Decl. of Counsel (Dec. 6, 2013) Ex. O, at 41:16–42:25, 51:21–

The natural consequence of both Ms. Walker's action and Mr. Charney's argument is that Walco conceded that the proposals were "readily ascertainable by proper means." See Idaho Code § 48-801(5)(a). Walco should be held to its actions and arguments.

**D. Three Summary Judgment Standards Apply With Particular Force in This Case**

Three summary judgment standards apply with particular force in this case.

First, as Walco itself recites, "the moving party is entitled to a judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial." *Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000) (emphasis added). There are no disputed facts about the efforts Walco took to "maintain" the "secrecy" of its allegedly proprietary information. Even if they are true, they cannot as a matter of law be "sufficient to establish" this element of Walco's claim.

Second, all other facts are irrelevant, no matter how awful Walco may misleadingly attempt to make them appear: "If the nonmoving party cannot make a showing on elements essential to his claims, there can be no genuine issue of material fact since a complete failure of proof concerning an essential element on the nonmoving party's case necessarily renders all other facts immaterial." *McGilvray v. Farmers New*

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52:11.) Walco conflates work product with end result and mischaracterizes the record by claiming that "Simmons did not want to give his actual total bid in public." (See Pl.'s Opp'n to Mot. for Summ. J. (Nov. 29, 2013), at 14.)

*World Life Ins. Co.*, 136 Idaho 39, 42, 28 P.3d 380, 383 (2001) (emphasis added) (internal quotation marks omitted).

Third, each party bears “the burden of supporting its argument both below and on appeal with citation to the record.” *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 145 Idaho 208, 218, 177 P.3d 955, 965 (2008) (emphasis added) (affirming summary judgment “on the alternate ground that Commercial failed to provide sufficient facts to survive a motion for summary judgment”).

Both Walco’s “cross-motion for summary judgment” and its response in opposition to the Defendants’ summary judgment motion are replete with citation-free “facts” that often have no basis in either the record or reality. This Court is not obligated to and should not sift hundreds of pages of the record to find facts Walco has not cited to the Court. In particular, Walco provided this Court no record citations to support its claim that Walco made efforts on and after October 16 to “maintain” the secrecy of its already-public information. The Court should not deny summary judgment based on factual assertions Walco does not support “with citation to the record.” *See id.*

For all of the above reasons, the Court should grant Idaho County summary judgment on Walco’s claims.

**E. Walco’s Request for Exclusion of Record Evidence is Baseless.**

Walco asks the Court to “exclude both for this summary judgment motion and during the trial” the “amounts paid to date on the Simmons contract.” (*See* Pl.’s Opp’n to

Mot. for Summ. J. (Nov. 29, 2013), at 25.) The most updated of these figures are provided above in footnote 4.

Walco cites no legal authority for the proposition that authenticated facts should be excluded either on summary judgment or at trial. Indeed, Walco cites no facts of its own to support its baseless claims about “clandestine dump locations” or the Defendants’ “likely skew[ing]” of the numbers. Walco refers to a “fuel cap” that does not exist in the contract.

Walco had the cost information it now challenges before Walco took depositions, but Walco did not seek to contradict, test, or impeach the evidence. Especially in light of this failure, Walco has no basis whatsoever for its request, and the Court should deny it.

**F. Walco Again Misstates Relevant Law and Facts.**

As in Walco’s brief in support of its “cross-motion for summary judgment,” Walco’s brief in opposition to summary judgment misrepresents the record before the Court and makes numerous, citation-free misstatements. Walco’s approach, especially its lack of citations to the record, compels Idaho County to highlight to the Court just some of Walco’s factual distortions. As before, the following discussion is in sequence, with page references to Walco’s November 29 response in opposition to the Defendants’ motions for summary judgment:

Page 3, footnote 1: Walco provides no citation for the assertion that on October 16, 2012 “the Commissioners had agreed that it appeared that the two bids were equal.” The record is replete with evidence that the Commissioners highlighted Walco’s

invariable 5% annual, compounding base rate increase from October 15 forward. (*See, e.g.,* Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 4:10–11 (Commissioner Brandt noting, “You took out the fuel surcharge and just [have] an automatic five percent.”); *id.* at 8:5–21 (Brandt clarifying the scope of the annual 5% increase); *id.* at 40:5–10 (discussing 5% increase).) As Idaho County already described in its opposition to Walco’s “cross-motion,” the Commissioners took an extra week from October 16 to 23 to confirm whether there was merit to Walco’s claim that Simmons would charge the County far more than he claimed. (*See* Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 34:19–35:7.)

Page 16: On October 15, Commissioner Rockwell did not, “within six minutes of the bid openings, clearly indicate[] that if the bid failed to match the exact parameters of the contract, that the bid would be considered non-responsive.” Even Walco’s quoted portion of the transcript on page 16 of its brief demonstrates Commissioner Rockwell immediately qualified his comment that Walco’s proposal was non-responsive: “We can run the numbers, and we should.” (Supplemental Decl. of Counsel (Nov. 15, 2013) Ex. E, at 6:11–12.) Commissioner Rockwell used procurement-speak to say what was obvious to all: Walco had rejected key terms important to the County, including regarding recycling. He did not state a final, binding position for himself or the other Commissioners as Walco insinuates.

Walco’s transcript excerpt on page 16 is completely misleading for its omission of several pages of written material and several minutes of recording. The recordings of the



October 15 and 16 meetings are often more illuminating than the written transcripts Walco provided, which show “inaudible” portions that can be understood on the recording. This is why Idaho County has in its briefs provided time stamp references to recordings in certain instances.

On October 15, 2012, the proposals were opened and base rates announced at time stamp 1:15 to 2:03. (*See* Decl. of Counsel (Sept. 27, 2013) Ex. A.) The Commissioners received their copies and began reviewing them at time stamp 5:18. (*Id.*) Several minutes of silence ensued while the Commissioners reviewed the proposals. (*Id.*)

Starting at time stamp 9:12, the Commissioners engaged in over five minutes of discussion about both proposals with Walco’s representatives before Commissioner Rockwell stated his opinion that Walco’s proposal was “non-responsive” because Walco specifically refused to use the County’s proposed contract and used Walco’s existing contract. (*Id.* at time stamp 14:48.) This was 9-1/2 minutes after the proposal copies were handed out, and over 12 minutes after the base rates were announced.

Walco is desperate to portray the Commissioners as having simply selected Simmons’ proposal immediately upon opening. But the recordings, the transcripts, and the deposition testimony all demonstrate beyond any genuine dispute that this did not occur.

Page 22: The October 23, 2012 meeting was in no way “the final meeting that Walco was allowed to attend.” This is absurd. Commissioners’ meetings are public meetings. Walco itself provided Idaho County the recording of the October 30, 2012

public meeting at which the Commissioners began contract negotiations with Simmons. (See Supplemental Decl. of Counsel (Nov. 15, 2013) Exs. D.1, D.2.) So Walco obviously attended and recorded it. This baseless accusation introduces another transcript excerpt that misrepresents what is actually reflected by the recording of the October 23, 2012 meeting.

When Idaho County's counsel, Kirk MacGregor, told Walco's representatives he believed they could indeed make a new or revised proposal if they wished to, Mr. Holman retorted as Walco's excerpt on page 22 shows. (See *id.* Ex. C.1 at time stamp 55:01 to 55:26.) But seven seconds of silence passed during which Mr. or Mrs. Holman could have made any proposal they wanted to. Only after their silence did Commissioner Rockwell explain to the Holmans why he had previously referred to Simmons as the "apparent low bidder" and had believed they should have begun contract negotiations with Simmons. (*Id.*)

Because the transcript includes an "(inaudible)" indication, Commissioner Rockwell's sentence reads completely out of context. He did not say or even suggest that "the Commissioners decidedly did not and would not allow Walco" to modify its proposal or propose a new price. (See Pl.'s Opp'n to Mot. for Summ. J. (Nov. 29, 2013), at 22.) And, in any event, Walco did not then or at any time after October 23 accept Mr. MacGregor's advice to offer a different proposal or lower price. They had their lawyer write protest letters and then waited several months to sue the County.

The above discusses just some of Walco's distortions of the record in this case. Idaho County has already outlined several other mischaracterizations of the record in its response to Walco's "cross-motion," and Idaho County incorporates those herein. (*See generally* Def. Idaho County's Mem. in Opp'n to Pl.'s Cross-Mot. for Summ. J. (Dec. 6, 2013).) Walco's repeated mischaracterizations of the record are serious and should not be permitted to raise false impressions that there are disputed material facts for a jury to decide.

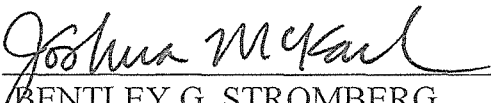
Finally, if the Court intends to rely upon any of the deposition testimony to which Idaho County objected, Idaho County would ask the Court to review and rule upon those objections. Only some of those objections are reflected by the deposition excerpts reprinted in Walco's briefs. (*See, e.g.*, Pl.'s Opp'n to Mot. for Summ. J. (Nov. 29, 2013), at 19 (questioning of Commissioner Rockwell omitting objections appearing in transcript).)

#### IV. CONCLUSION

The Court should grant Idaho County summary judgment on all of Walco's claims.

DATED this 13th day of December, 2013.

CLEMENTS, BROWN & McNICHOLS, P.A.

By   
BENTLEY G. STROMBERG  
JOSHUA D. MCKARCHER  
Attorneys for Defendant Idaho County

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:


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IDAHO COUNTY DISTRICT COURT  
FILED  
AT 4:24 O'CLOCK P.M.

DEC 16 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and

SIMMONS SANITATION SERVICE, INC.,  
an Idaho corporation,

Defendants.

Case No. CV 42360

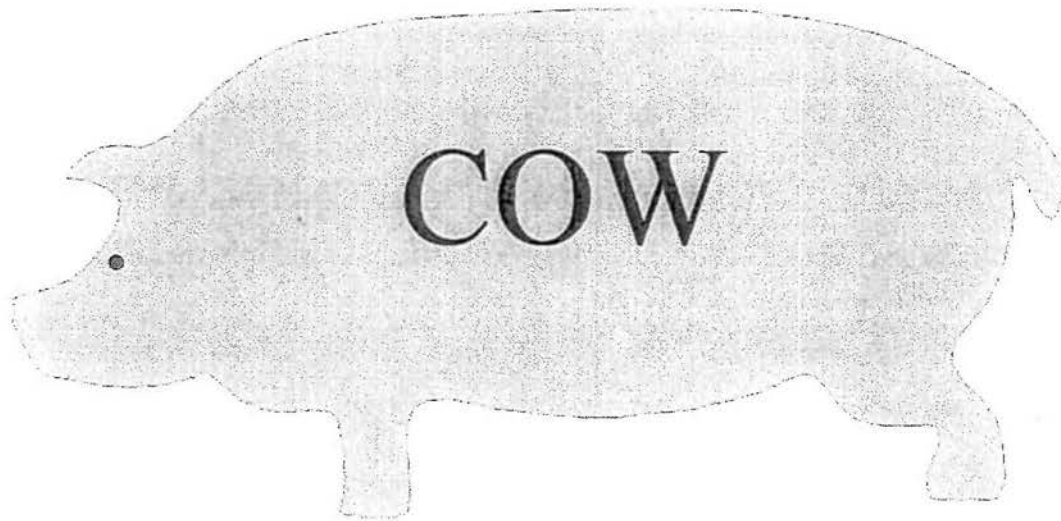
**PLAINTIFF'S RESPONSE IN  
OPPOSITION TO COUNTY OF  
IDAHO'S AND SIMMONS' MOTIONS  
FOR SUMMARY JUDGMENT**

**PRELIMINARY STATEMENT**

The Defendants claim that Walco's bid information was not proprietary and could not have been misappropriated after the bids for the solid waste contract were opened. Primarily the Defendants argue that the bid process was not competitive. Instead, they try to paint the process as a request for proposal. Plaintiff summarizes its argument in response as follows:

**PLAINTIFF'S RESPONSE IN OPPOSITION TO COUNTY OF IDAHO'S AND  
SIMMONS' MOTIONS FOR SUMMARY JUDGMENT- 1**

1570



No matter what label we put on this image, it can be nothing but a pig. Similarly, even though the Defendants attempt to label the process as a request for proposals, the process was, without a question, an invitation for a competitive bid. After the bids were opened, however, the process lacked any definition, with the commissioners essentially inventing a new process that was designed to favor one bidder, Simmons, over Walco. The end result is that the County initially elicited a total bid price from Walco but not from Simmons. Simmons was then allowed to undercut Walco's bid. Walco's bid was proprietary and under the competitive bidding structure was valuable as a trade secret since the lowest bid wins the contract. Because Walco did have a specific trade secret, and because it made reasonable efforts to maintain that secrecy, Walco's second claim is not precluded. Moreover, material facts are in dispute such that a jury trial is necessary, and the Defendants' motions for summary judgment should be denied.

## I. SOLID WASTE CONTRACT BASICS

In fact, the County Prosecutor, Mr. MacGregor posed the central question in this case to Walco during one of the commissioner meetings held after the bids were opened. Note the following exchange:

**Mr. MacGregor:** I mean, James, Mr. Rockwell, is saying apparent. Again, we don't know who the low bidder—last week we didn't know who it was for sure because you had raised some points. That's what we're trying to find out. And as far as your bid being complete, yes, you know, that's a very good that you made a complete bid proposal. You know, you did address a lot of those things, but that doesn't mean we have to pick it just because it's the more complete bid. I mean--

**Mr. MacGregor:** If your price is \$200,000, and it's the complete bid, and his [Simmons] is 77, why wouldn't we go with—

**Mr. Holman:** That's not the case.<sup>1</sup>

**Mr. MacGregor:** No, but I'm saying . . . she says we should pick her [Marietta Holman for Walco's bid]—pick you guys because it's a more complete bid. I don't agree with that. (Exhibit F, Meeting Transcripts, Oct. 23, 2012, p. 3, ll.2-24).

As the court is aware, a public entity is not obligated to use a competitive bid process if it declares that using said process is not in the public interest. In this case the county did not make any such declaration and elected to put the contract out for competitive bid wherein the lowest apparent bid became of upmost importance.

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<sup>1</sup> In fact, given the information that Simmons provided during the October 16, 2012 meeting, the Commissioners had agreed that it appeared that the two bids were equal, and that was without including the monthly cost of running an in-county transfer station, which Simmons did not include in his bid.

To answer Mr. MacGregor's question, the legislature had reason to believe that a county may want to or need to pay \$200,000 rather than \$70,000 if it meant that the contractor offered excellent waste disposal services versus "just-getting-by" services: something that ultimately affects the health of every Idaho County resident. In fact, the only reasonable explanation why the County would not focus on whose bid was more complete and instead decided to choose the lowest bid, is that it was not concerned with quality or totality of service over price. Rather, it was most concerned with the lowest price it would have to pay to get the services done as it had specifically outlined in the proposed contract. And that most definitely epitomizes a competitive bid process. As will be shown later, the meeting discussions were focused on which bid was lowest and the commissioners themselves reiterated this many times in recent depositions.

In Idaho county, and others, solid waste contracts have a base price. This is the general price associated with providing the service. There are also add-ons. This would include, for example, a fuel surcharge. There are add-ons for disposal of certain items. In some instances there may be additional charges for extra tonnage above that which is contemplated.

The bid invitation Idaho County published obligated bidders to set a base price and fuel surcharge. It also obligated bidders to operate a transfer station in the service area (the western portion of the county) and to pick up the dumpsters, at exact locations, on exact days of the week. No discretion, as to any material term, was left open for discussion. The county complied with the bidding statutes by publishing the notice as required, by keeping the bids confidential until the day they were opened, and by actually opening them in a public meeting devoted only to that end. Pursuant to law, to choose a contractor under the competitive bidding process, the county could only accept the lowest bid, assuming the bidder complied with the specifications. As will be pointed out



below, the commissioners demanded exactitude from Walco with respect to the specifications but imposed no such obligation on Simmons.

Walco submitted an all-inclusive bid that addressed all material items. For \$87,000 per month it would offer all services, at all times and the fuel surcharge was included in that price. Simmons, on the other hand, submitted a bid for \$77,000 per month but failed to set forth what his fuel surcharge would be, that he would otherwise comply with the times and dates for pick ups and, importantly, that he would operate a transfer station in the service area. Further, he placed a tonnage cap on his bid. Nowhere in the bid invitation was a bidder permitted to put a cap on tonnage. Finally, Simmons only addressed an unmodified plan while Walco addressed both a modified and unmodified plan. The invitation for bids required that both a modified and unmodified plan be addressed. Copies of both the Simmons bid and the Walco bid are in the record. The differences between the two are glaring.

## **II. FACTS WITHOUT SUBSTANTIAL CONTROVERSY**

1. On September 11, 2012, Idaho County approved publication of a document entitled "Solid Waste Management System Proposal Specifications" with a response deadline of October 12, 2012.

2. The document consisted of two pages of specifications, 16 pages of a proposed contract with two exhibits, and two pages of evaluation criteria. (Ackerman Decl. Exh. J supporting Idaho County's Amended Motion for Summary Judgment).

3. The document specifications were clear and unambiguous with regard to whether it was a request for proposal or an invitation for bids.

4. Although the document refers to proposals, in reality, it sought competitive bids and as a matter of law was an invitation for bids - not a request for proposals.

6. The factors that made it an IFB and not an RFP, include, but are not limited to the following:

(A) Cost. The primary criteria upon which bids are awarded—was detailed in the initial factors and again in the evaluation criteria, with cost being a consideration for two out of the four evaluation factors: cost control- Factor 3 and “Cost Proposal”- Factor 4;

(B) Proposed Contract. The plans and specifications as well as budget is detailed; and

(C) Proposal Materials. It specified that the previous contract was available in the Recorder’s office and could be seen upon request. This contract, and the exhibits attached thereto, made it perfectly clear that the bidder had virtually no discretion with respect to the delivery of the service.

(D) The manner in which it was handled. The county commissioners repeatedly indicated that they were obligated to deal only with the lowest bidder and/or the apparent low bidder.

### III. STANDARD OF REVIEW

To begin, I.R.C.P. 56(c), specifies that a motion for summary judgment should only be granted if the “pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law.” The Idaho Supreme Court in *Cuevas v. Barraza* reminded courts that disputed facts and reasonable inferences should be liberally construed in favor of the nonmoving party.<sup>2</sup> But the “nonmoving party cannot rely on mere speculation, and a scintilla of evidence is insufficient to create a genuine issue of material fact.” *id.* The evidence offered in support of or in opposition to a motion for summary judgment must be admissible.<sup>3</sup>

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<sup>2</sup> 277 P.3d 337, 341.

<sup>3</sup> *Callies v. O'Neal*, 147 Idaho 841, 846 (Idaho 2009).

#### IV. ARGUMENTS AND AUTHORITIES

##### A. Walco's bid was proprietary under the Idaho Trade Secrets Act.

###### 1. The Idaho Trade Secrets Act.

In order to prevail in a misappropriation action under the Idaho Trade Secrets Act (ITSA), the plaintiff must show that a trade secret actually existed. *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 735, 992 P.2d 175, 184 (1999). In *Basic American*, the Idaho Supreme Court looked to the Restatement for six factors that can be used to show that given information is a trade secret: (1) the extent to which the information is known outside [the plaintiff's] business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Id.* (quoting Restatement of Torts § 757 cmt. b (1939)) (alteration in original). All of these factors address the issue of whether the information in question was generally known or readily ascertainable. *Id.*

###### 2. Bids have long been recognized as trade secrets.

Idaho courts have long approved the use of the *Restatement* factors for defining and proving a trade secret as noted in *Basic Am. v. Shatila*, 133 Idaho 726, 735 (Idaho 1999). Those factors include bids. *Restatement of Torts* § 759, cmt. b explains, "Examples of [such] information . . . include . . . the state of one's accounts, the amount of his bid for a contract, his sources of supply, his plans for expansion or retrenchment, and the like. There are no limitations as to the type of information included except that it relate to [secret or confidential] matters in the business."(emphasis added).

3. Walco's bid was proprietary because it was the lowest on opening day, and it was offered in a competitive bid process.

In a competitive bid situation, the lowest bid wins. Thus, because Simmons obtained Walco's total bid amount before the final award, and was then granted a week to further manipulate his numbers knowing Walco's price, he was able to undercut Walco's bid. On October 16, 2012, he had not yet bid certain add-ons and refused to be held to any specific monthly price for those add-on services. At Simmons request, the Commissioners allowed him to come back a week later, wherein he had come up with the add-on amounts. Not surprisingly, he came in just under Walco's bid. Additionally, the County arbitrarily decided that an in-County transfer station would not be required of Simmons but they did not ever allow Walco to submit a bid that subtracted this amount from its' monthly price.

What is especially problematic here is that while the County proceeded under a competitive bid process initially, it then switched course and acted as if it had the freedom to use whatever method it wanted to choose a bidder—including choosing a bidder whose bid was so deficient that it was impossible to know whether his bid was the lowest or the highest without further questioning. For example, on the first meeting to discuss the bid specifics, October 16, 2012, the following discussions occurred:

First, Simmons admitted his bid failed to include an in-county transfer station as required in the bid proposal:

**Commissioner Rockwell:** I have a couple of questions. The transfer station I guess this could be a question to you, Robert. Because you don't have a transfer station up here and Walco does just in the grand scheme of things how do you propose or suggest you're going to take care of the county citizens who are used to dumping at the transfer station?

**Mr. Simmons:** This proposal we did was literally doing the route themselves, not putting up any other roll offs at this time to take care of that. . . . that was not part of my proposal. (Exhibit E, Commissioner Meeting Oct. 16, 2012, p. 9).

Later, after being questioned, Simmons admitted that he did not include the fuel surcharge mileage:

**Ms. Holman:** And we have one more question. Does the \$77,000 cover--- what is the fuel price of the \$77?

**Unknown Person:** 259 right in the contract that was (inaudible) proposal.

**Ms. Holman:** Okay. Now if we go and add the fuel surcharge with—and he's also going to be traveling an extra 70 miles per truck up to this area because he's got to go back to Kamiah. . . . So now if we add 7,000 onto the 77 or 84 plus the extra tonnage you're at \$87,000 same as ours. [not including cost of no transfer station].

**Commissioner Rockwell:** Robert, what do you think of that?

**Mr. Simmons:** I did not actually do the extra mileage on—for that. (Exhibit E, Oct. 16, Meeting Minutes, p. 18).

In response to Ms. Holman's calculation that the surcharge would be \$7,791 (Exhibit E, p. 17, l.

19) Simmons stated the following:

**Mr. Simmons:** I did not do the extra mileage on—for that. But we were actually pretty close in the—I think it was (inaudible) figured the five—about 79. But that is where the fuel surcharge is. That's where it's at." (Exhibit E, October 16, 2012, Meeting Transcripts, p. 18, ll. 1-4).

When it became obvious that the two bids, not including the transfer station, were equal or close to it, on October 16<sup>th</sup>, Simmons asked to come back on October 23.

**Mr. Simmons:** You can fit that in there that I would have to come into executive session and show you the numbers for—if that's the number that is really sticking. . . . We're not talking about consolidated sites at the moment. We're talking about the original bid. If that's the bid price for fuel surcharge

at this point in time. I don't have a problem showing you those numbers in executive session for proprietary reasons.(Exhibit E, Oct. 16, 2012 Meeting Transcripts, p. 31).

Indeed, the Commissioners asked him to come back the following week: Brandt explained the reason at the beginning of the Oct. 23 meeting:

**Commissioner Brandt:** Okay, Commissioners, we're back to talking trash, and where we left if it is Simmons was going to visit about—with us about—Mr. Simmons was going to visit about the additional cost and fuel-age, tonnage, or anything that he would like to share. We've opted not to go into executive session so it's whatever you want to give us in opening. (Exhibit F, Oct. 23, 2012 Meeting Transcripts, p. 47).

Right away Simmons explains his new, significantly lower, monthly fuel charge amount: \$5,100 per month. He then falsely denied that just the week prior he indicated the amount of \$7,900 for monthly fuel prices.

**Mr. Simmons:** No, I didn't say 79.

**Ms. Holman:** Yes.

**Mr. Simmons:** I said I did not know. I said that I would come back. (Exhibit F, Oct. 23, 2012 Meeting Transcripts, p. 85, ll. 13-15).

But a review of the transcripts from the previous meeting shows that, indeed, Simmons *had* said his amount would be \$7,900 for the fuel surcharge. He never said he didn't know. Nevertheless, Simmons was allowed to continue to wheedle away at his numbers over a week's time until his numbers appeared to be less than Walco's original bid.

In actuality Simmons' original bid, before he manipulated it over the week's time, was the higher bid and Walco's was the lowest – and the Simmons bid did not even factor in the expense of a transfer station. Certainly, by the time the final contract came out, Simmons' had been allowed to raise his originally quoted tonnage cap so that his final pricing was much less than his original

pricing. On day one of the bid opening, though, when considering both pricing as to base price plus add-ons, Walco's should have won as the apparent lowest bid.

**a. At a minimum, (even excluding the cost of an in-county transfer station) Simmons bid was \$332 per month higher than Walco, even though Walco had included the cost to operate a transfer station in its' bid.**

On the 16<sup>th</sup> Simmons revealed that his fuel surcharge would be \$7,900 per month. This put his bid at \$85,102. Additionally, his tonnage cap was 4500 tons per year. Commissioner Brandt figured the two prior year average tonnage from Walco to be 4630 tons. Simmons' monthly price, annualized, amounts to \$929,424. This amount, divided by 4500 tons, (Simmons bid annual limit) amounts to the sum of \$205.87 per ton for Simmons disposal fee. Thus, by Brandt's own number, Simmons would be charging for an additional 130 tons. This amounts to an additional \$26,763 per year, or, an additional \$2,230 per month. This amount, added to the \$85,102 that Simmons quoted on October 16<sup>th</sup>, 2012, amounts to \$87,332 per month. Thus, Simmons left the meeting on the 16<sup>th</sup> knowing his bid was higher than his competitor and with a far better understanding of Walco's bid process and number. He knew, after crunching the numbers, that he was not the low bidder, even excluding the transfer station cost. Thus, he rectified the problem over the course of the following week. At the next commissioners meeting, one week later, his fuel surcharge had magically dropped from \$7,900 to \$5,100 – just enough to undercut Walco. How he arrived at this number is unknown. A fuel surcharge is based on the mileage associated with the routes in the contract. The distance from his shop/transfer station location in Kamiah to all of the locations to be served did not change between October 16<sup>th</sup>, 2012 and October 23<sup>rd</sup>, 2012. What did change, however, was his understanding of the Walco bid and how \$87,000 per month included everything – fuel surcharge included. Utilizing this knowledge that he

obtained from Brandt and the other commissioners, he recast his bid to undercut Walco and obtain the contract.

**4. Idaho County and Simmons knew and know that Walco's bid was proprietary.**

Defendants argue that Walco has not identified any trade secrets in the Complaint, much less to Idaho County or to Simmons at the time of bidding, such that any entity knew what Walco wanted protected. But this is not true for several reasons. For one, Walco sent a letter to Idaho County putting it on notice that it wanted its bid amount protected. This letter directly addressed proprietary information that Walco would submit in response to an invitation to bid. Mr. Charney wrote: "With respect to Walco's proprietary information, we respectfully request that any proprietary information held by the county be retained by the county and treated as exempt under the Public Records Act." (Charney Letter Exhibit G). Idaho Code § 9-340(D) part 1, noted in both memorandums for Defendants as well, specifies, "The following records are exempt from disclosure: (1) Trade secrets including those contained in response to . . . requests for proposal."

That statute continues as follows:

"Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

When questioned regarding the letter and whether the commissioners protected Walco's bid and accompanying details, the commissioners admitted they did not take any measures to protect the information.

James Rockwell



Q: Next paragraph, we wrote: With respect to Walco's proprietary information we respectfully request that any proprietary information held by the County be retained by the County and treated as exempt under the Idaho Public Records Act. Did you see that sentence?

A: Sure.

Q: My question to you was: Did you, personally, take any steps to try and preserve the integrity of any information that you thought might be proprietary? Yes or no?

(Stromberg objection)

A: None. Neither—neither. I didn't do that. I didn't realize there was proprietary information that needed protected, and it is not the job.

(Exhibit A, James Rockwell Deposition, p. 30-31.)

#### **Skip Brandt**

Q: Do you recall receiving this letter whereby I make a specific request that Walco's proprietary information that is held by the County be retained by the County and treated as exempt under the Public Records Act?

A: I am sure that I did because I read the letter (Brandt Deposition p. 39)

Q: You told him the price even though he sent you a letter on June 7<sup>th</sup> that said please don't disclose our proprietary information, correct?  
(Stromberg Objection)

A: Proprietary information—I don't know of any proprietary information. (Exhibit B, Brandt Deposition, p. 76).

#### **James Chmelik**

Q: Did you personally take any steps to protect any proprietary information held by the County at that time or given to the County after this?

(Stromberg Objections)

A: I wasn't aware of any proprietary information that the County had.

Q: So if you weren't aware of any then you took no steps to protect it?

A: It is all public record

(Exhibit C, James Chmelik Deposition, p. 9).

Second, during the meetings, following the opening of the bids, Walco asserted that their total bid price had been misappropriated because Simmons had not yet actually quoted a total bid as Walco had done. Simmons understood this because when pressed to give his total bid price, he then insisted on an executive session claiming his bid amount including add-ons was a trade secret. He refused to state it even though Walco's total bid had been revealed the week before.

**Commissioner Brandt:** Okay. Yeah. So we will continue that discussion in which we will have part of it in executive session for Simmons. Is there any reason you folks would want to come in for executive session? . . . . We have to come out to really have discussions that are not proprietary.

....

**Mr. Holman:** As a propriety if it's a bid he doesn't have yet. It's a bid. It's not his current numbers.

....

**Mr. Simmons:** It's still my current numbers on how I operate.

....

**Commissioner Brandt:** So we'll make part of it executive session.  
(Exhibit E, October 16, 2012, Meeting Transcripts, p. 36).

Mr. Charney protested this by letter and the executive session was canceled. However, the point is that Simmons did not want to give his actual total bid in public, and his reasoning that Commissioners agreed with was because he recognized the independent value of the bid amount.

**a. Material facts exist that disprove Defendants' contentions that the trade secrets were invaluable and easy to attain elsewhere.**

Defendants have argued that Walco's bid information was invaluable and easily known to all and especially to Simmons. The facts show otherwise. Walco's bid information was, in fact, valuable, sought after, and relied upon—all under protest by Walco. To prove that Walco's bid was proprietary even after both Simmons' and Walco's bids were opened and that that same

information was valuable and misappropriated, it is of utmost importance that this Court realize the bidding process itself was purposefully flawed. It was so flawed that it allowed the County and Simmons to misappropriate Walco's bid information under the guise of negotiating out in the open in an alleged request for proposal situation. As argued more specifically in its cross-motion for summary judgment, the proposal itself was a request for a competitive bid and the County specifically chose the apparent lowest bidder, even though it followed none of the other standard competitive bid procedures. It never knew for sure what Simmons' total bid price was, even though it continued to allow Simmons to keep key costs out his bid price. In fact, during the meetings and during depositions, the commissioners, even while acknowledging that they were ignoring key pricing terms in the Simmons proposal, still chose Simmons' bid because it was allegedly a lower bidder than Walco.

This went against the bid proposal document. By stating that a detailed, complete bid was required and that the contract included with the bid was an example of a contract the County wanted to make with a contractor, the County presented bidders with the expectation that the bid was to be complete in all respects. Walco, by including all possible costs and by running an in-county transfer station that Simmons did not propose, bid a higher amount than Simmons, because it included in it's bid all the requirements imposed by the County. However, the County chose Simmons' contract before Simmons submitted a bid that factored in all of the requirements. And the County declared that it did so because Simmons' was the lowest bid. (see meeting transcripts later in this brief). Because the County was set on choosing the lowest apparent bidder and not the bidder who most complied with the invitation to bid, Walco's bid amount was of independent value.

From day one, the commissioners were focused on the fact that the bidders must be compliant with the bid contract. On October 15<sup>th</sup>, 2012, when the bids were opened, the Commissioners and Walco representatives were present. Simmons was not. Commissioner Brandt opened the two bids (Walco's was sealed) and announced the stated proposed bid prices. Six minutes into the meeting one commissioner, who had already pre-determined that Walco was not going to get the contract, said that Walco did not submit a bid that exactly matched the contract, even though he first acknowledged that Walco's bid was more complete than Simmons'.

**Commissioner Brandt:** All right. This is a good meeting. We have one subject. [opens bids] Okay, the first one was Simmons Sanitation, and they have—well, they've got a base price of \$77, 202 per month (inaudible) some detail—vague detail. And then we have Walco (inaudible) letter, and they have a base price of \$87,000 and a lot more detail. (Meeting Transcripts, p. 2, ll. 10-16.)

[clerk makes copies of the two bids and brings  
copies back for all commissioners.]

**Commissioner Rockwell:** Not really, though. What we said was we were using the contract with the surcharge.

**Commissioner Chmelik:** Right.

**Commissioner Rockwell:** So if you [Walco] don't use that contract, it's basically non-responsive. We can run the numbers and we should (inaudible) and it has a surcharge. (Exhibit D, Meeting Transcripts, p. 6, ll. 6-13.)

In other words, this commissioner, within six minutes of the bid openings, clearly indicated that if the bid failed to match the exact parameters of the contract, that the bid would be considered "non-responsive."

During the following meetings, they were only concerned with who was the lowest bidder or lowest apparent bidder. MacGregor even specifies that cost was the most important evaluation bid factor. Examples of just such statements are as follows:

Exhibit E, October 16, 2012 Meeting Transcripts

**Commissioner Rockwell:** [O]ur business is to create a county-wide collection system, which we asked you to bid. You bid. We asked Robert to bid, and he did. So it's apples to apples there when I'm looking at the numbers. (p. 23)

....

**Commissioner Rockwell:** (inaudible) If you tell us your number is \$82,000 I'm going to take that number. Robert tells us his number is whatever it is (inaudible) take that number. Again, I don't want to throw anything in here that's extra. (p.25)

**Commissioner Rockwell:** You shouldn't be talking for him, though, or vice-versa I think relative to numbers. If he tells us his number I've got to count on that, and that's the check we're going to write. (p. 25)

**Commissioner Rockwell:** Just as a for instance we asked you to bid a specific contract and specific ideas in that contract, and you chose not to—  
.... (p. 25)

**Commissioner Rockwell:** Patrick, I wish you would have bid as we requested because— (p.27)

**Commissioner Rockwell:** You say a five percent. His is what we had in the contract (inaudible) which was a surcharge (inaudible.) (p. 27).

**Commissioner Rockwell:** So I don't have any other questions, Skip. I had one thought that maybe we enter into negotiations with the current low price bid and if that is unsuccessful we move onto the second low bidder. I don't know how we're going to do this but-- . . . Walco believes both numbers are similar. Simmons believes his is less expensive by \$5,000. (p. 30).

**Mr. MacGregor:** I couldn't remember when we put it out for bid, did we set a deadline after the bids came in? . . . You may want to consider – I mean, just look at this and consider what Walco is saying and make sure. (p. 30).

**Commissioner Rockwell:** I'm saying I think it's necessary not to award (inaudible) enter into discussions with the current low bidder, and then find out some (inaudible) if it is true of the two numbers—after talking with Robert the two numbers are identical then we have a different animal. (p. 30-31).

**Mr. MacGregor:** Right. I agree. (p. 31).

**Commissioner Chmelik:** I would be really interested to know (inaudible). Without that number it's not on this bid (inaudible). (p. 31).

....  
**Commissioner Brandt:** Okay. I see we need to crunch a lot more numbers. (p. 34).

....  
**Mr. MacGregor:** I would say table it for a month—I mean, for a week—for a week and crunch some of the numbers. (p. 35).

....

**Exhibit F, October 23, 2012 Meeting Transcript**

**Commissioner Brandt:** This is what I've been crunching, which trying to get to apples to apples, and we started out with what I looked at is I'm trying – I still haven't figured out what the justification for Marietta and Patrick's realm of the \$87,000 a month. (p. 48).

....

**Commissioner Rockwell:** (Inaudible) I think we should be in negotiations with the apparent low bidder. It's what we're supposed to do. . . .(p. 90).

**Mr. MacGregor:** We weren't sure if he was low was my understanding that's why we wanted to come back today. You guys were saying he was not the low, and we were listening to you. (p. 91).

**Mr. MacGregor:** Well, one of the evaluation criteria is the cost, I mean, (inaudible.) . . . But I'm assuming you would agree that was the most important factor of the bid was the cost. (p. 93).

....

**Commissioner Rockwell:** I'm just asking the number. (p. 94)

....

**Commissioner Schmelik:** Have we hashed this out enough? Well, I make a motion (inaudible) Simmons.(p. 13).

**Commissioner Rockwell:** I second that. The current low bidder.(Id.)

**Commissioner Schmelik:** The current low bidder. (Id.)

**Commissioner Brandt:** Motion has been made and seconded. Any further discussion? All those in favor say, aye. (Id.)

(In unison, Aye.)

During depositions in November, 2013, each commissioner explained his focus on the lowest bid amount:

**James Rockwell**

Q: You're concluding that Mr. Simmons is the apparent low bidder?

A: I am.

Q: In the absence of knowing his fuel surcharge in the absence of knowing what his tonnage average would be, while excusing him from a rather hefty financial obligation of operating a transfer station that you say shall be in Idaho County, so how did you arrive at the conclusion that he was apparent low bidder in the absence of knowing these numbers?

A: Because Walco came in at \$87,000 with a 5 percent guaranteed increase per year, and Simmons came in at \$77,000 with a CPI increase or not, plus a surcharge. The numbers were pretty basic.

Q: Yeah, the numbers are basic if you don't have to put all your numbers in, though, wouldn't you agree?

A: I will neither agree nor disagree. I'm telling you how we got to apparent low bidder.

Exhibit A, James Rockwell Deposition, Nov. 4, 2013 (p. 137-138)

**Skip Brandt**

Q: Okay, but you guys were all quick to say he is the lowest apparent bidder, though, weren't you?

(objection by Stromberg)

Q: Did you run that number before you jumped to the conclusion that he was the lowest apparent bidder?

(objection by Stromberg)

A: No, I did not.

Q: Why not?

A: Because I hadn't crunched that number yet.

Q: Okay. Did you crunch his fuel surcharge number before concluding that he was the lowest apparent bidder?

A: At what time?

Q: Any time before you said he was the lowest apparent bidder.

A: I'm not sure when I crunched those numbers. Again, if I had—at some point in time during the discussion in open meeting I crunched a lot of numbers.

Exhibit B, Skip Brandt Deposition, Nov. 4, 2013, p. 98-99

**James Chmelik**

Q: Simmons was the winner?

A: Simmons, based on how I based my decision, yes.

Q: My question is: What did you base your decision on?

A: Well, I based my decision on that I thought they had a lower price.

Q: Okay. So price was the issue for you, then?

A: It was one of them.

Q: Okay, You've said numbers. You've said price. In the transcript you said lowest bidder—let me doublecheck—current low bidder. So price was key in your mind, correct?

A: Price was an issue in my mind.

Exhibit C, James Chmelik Deposition, Nov. 4, 2013, p. 51-52.



Certainly, Walco's bid price was valuable and it was proprietary given the competitive nature of the bidding process. The question that looms, then, and is appropriate for a jury to decide, is did Idaho County wrongfully reveal Walco's proprietary information: its bid? Certainly, the jury will need to weigh the evidence previous to and during the opening of the bids. Simmons did not respond as if the invitation to bid actually requested a total bid price as his bid did not account for numerous items. Walco did. Of import, as outlined in Walco's motion for summary judgment, earlier in the summer of 2012, Brandt had emailed Simmons the contract information from Sunshine Disposal, who had been initially interested in bidding. Brandt did not email that information to Walco. Also, Brandt texted Simmons right away to tell him that only Walco had turned in another bid. He did not text Walco to tell them that Simmons was the only other bid. A review of texts sent between the two show that the two texted back and forth about the contract between October 12 and October 17, 2012 as follows:

10/12/2012	Brandt:	Its in
10/13/2012	Simmons:	How mAny bids are there (sic)
10/13/2012	Brandt:	WALCO dropped on off at 4:45, So just the two.
10/13/2012 (12:57)	Simmons	K
10/13/2012 (12:58)	Brandt:	I would note that I do not no details.
10/13/2012 (12:59)	Simmons:	K
10/17/2012	Brandt:	When you get back from h c give me a call.

The day the bids were unsealed, October 15, 2012, his conduct was nothing short of astounding. The meeting, which Simmons did not attend, was relatively short. Immediately after the meeting Brandt called Simmons – twice – and conversed for 13.5 minutes. (Charney Declaration in Support of Cross-Motion, Exhibit D). Brandt admitted that he discussed the Walco bid and pricing information during those calls. About 2 hours later Simmons called Brandt. They spoke for nearly half an hour. Brandt admitted that, once again, he shared the details of Walco's bid proposal with Simmons. (Id., Exhibit E.) Simmons, on the other hand, denies this. He claims they discussed "elk hunting." (Id., Exhibit F). Such a disparity between the only two parties that participated in the call creates an issue of fact. It also reveals, clearly, that Simmons knew he had something to hide.

Subsequently, the jury will need to consider why the County continued to give Simmons leeway with the pricing of his services but not Walco such that Walco's bid price continued to be misappropriated. Walco asked the County this question in discovery and in answer, the County responded: "Walco was never prevented from offering a different proposal than its original proposal either spontaneously in a public Commissioners' meeting or in a writing delivered to the Commissioners." The facts, once again show otherwise. Although the County attorney thought this might be a possibility, the Commissioners decidedly did not and would not allow Walco to reduce the services it had bid for in order to compete on the same field as Simmons. Instead here is what Walco was told during the final meeting that Walco was allowed to attend on October 23, 2012:

**Mr. Holman:** So can we just tell you right now our bid is \$65,000, and there's a bunch of things in there that we can talk about at negotiations because that would put us in negotiations first. Ours was specific.

**Mr. MacGregor:** I think you can. I think if you want to say that we can sit here and negotiate with whoever we want. Yeah, you can say that.

**Mr. Holman:** That sounds fair. Would that be fair to Robert?

**Commissioner Rockwell:** (Inaudible) I think we should be in negotiations with the apparent low bidder. It's what we're supposed to do. . . .(Exhibit F, p. 90).

The Commissioners shortly thereafter moved to negotiate only with Robert Simmons. The facts certainly support the argument that both the County and Simmons waited for Walco's final and detailed numbers—that were trade secrets— before finalizing those very same terms in Simmons' contract.

All of these issues prove that disputed material facts exist as to whether Walco's trade secrets were misappropriated. Walco will argue that even in light of the letter, even in light of the statute, even in light of the fact that the envelope was sealed, Idaho County *still* saw fit to reveal the information to Simmons and Simmons saw fit to run with it, even while calling his own unspecified numbers proprietary. Without a flawed bid process, it is more likely than not that neither Simmons nor the County could have acquired or duplicated Walco's bid- but this is a material disputed fact for the jury to decide, not a legal issue that would dispose of the complaint.

**b. Using the Walco bid as an exhibit some 8 months after Simmons bid was chosen and after Simmons had gained the contract, does not mean that Walco's bid was never valuable or never required trade secret protection.**

Walco's bid amount and the specifics regarding that bid were valuable as long as the bid was live and no contract had been awarded. If the County was intent on continuing to negotiate after opening the bids it had an obligation to keep Walco's number secret and let Simmons come up with a bid price on his own – without the benefit of Walco's numbers. Thus, by the time Walco attached its bid to its complaint, Simmons and the County had long since prior misappropriated the proprietary information. As counsel noted in a past hearing, this line of reasoning would be the

same as saying that President Obama spilled state secrets by repeating information that Edward Snowden had already divulged. The secrets were secrets no longer. In this case, the proprietary bid was no longer of any value after another contractor had been chosen.

**c. The Florida law the Defendants cite to support Walco's contentions, not the Defendants.**

It should be noted that both defendants cite to Florida case law regarding alleged public records statutes that require entities to mark which documents and the parts of documents that should be protected. Without such marking, both defendants argue, Walco should not have expected any protection. In fact, though, in Florida, sealed bids and proposals submitted to agencies are exempt from disclosure as public records until the agency provides a notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier. Thus, it provides temporary, but automatic, protection. (Florida Code § 119.071 available at <http://www.flsenate.gov/laws/statutes/2011/119.071>). Neither Idaho law nor case law, however, specifies any like timeframe for RFP and bid protection, and thus appears to provide long term protection for sealed bids and requests for proposals. Either way, both sets of laws protect bidders in ways that Idaho County and Simmons failed to do: Until a bidder is chosen, no further discussions or altering of the initial bid price is allowed. Additionally, Simmons, himself, requested trade secret protection as to his bid during the public hearings, so he, in turn understood the importance of protecting proprietary information and what defined a trade secret in a bid proposal as noted previously. By crafting his final bid amount based on the bid that Walco initially submitted, Simmons, misappropriated Walco's proprietary information, and the County, likewise, allowed it.

**B. The amount Idaho County has paid for the contract through early fall 2013 should be excluded.**

Defendants claim they have paid Simmons less than they would have paid Walco had they awarded Walco the contract Walco submitted. The amount paid to date on the Simmons contract beginning in 2013 should not be admissible here. For one, it differs substantially from the opening bid Simmons himself gave. Second, this amount would not readily show how much waste overage by year's end that will exceed the waste tonnage cap and will thus add year-end charges. The same is true of fuel. Also, even if the fuel cap is not exceeded, this is likely because residents are dumping their items in clandestine dump locations. Further, since both the County and Simmons are in litigation regarding the costs and amount of the contract, the two parties, especially Simmons, would be especially conscious of costs and these amounts are likely skewed for the very purpose they are presented to the court. Moreover, the issue is not how much the contract ended up costing the county, but how much the county thought the contractors would charge them at the time of the bid proposals. Thus, the evidence should be excluded both for this summary judgment motion and during the trial.

### **C. Tortious Interference**

Walco agrees that its tortious interference claim is precluded because it did not allege a claim against a third party but against Idaho County, a party to the contract.

### **CONCLUSION**

After the Simmons contract was complete, the Commissioners published a letter to the editor responding to concerns raised in a previous letter to the editor. The Commissioners wrote:

The real question is, how much are you willing to pay to make your garbage go away? The county has to provide a solid waste service, but no one is going to collect your garbage and dispose of it correctly for

free. . . [w]e have made every effort to provide this service at a rate that doesn't cause additional financial hardship.<sup>4</sup>

The Commissioners have a right, under law, to be concerned with providing lowest cost solid waste disposal. Such a goal is met by inviting competitive bids, which it did. The issue in this case is that this was an IFB designed to elicit proprietary information. Immediately upon unsealing the bids the process changed so that Simmons would be given a chance to undercut Walco. Walco was not given a reciprocal opportunity, however. The facts show that the day the bids were opened, even excluding the transfer station, Walco's bid was lower than Simmons. One week later, though, Simmons' bid was lower than Walco's.

This case rests largely on disputed facts rather than matters of law as Defendants suggest. Walco had proprietary information. The question is whether that proprietary information was misappropriated, and this is the question that a jury must decide. Thus, this Court should deny Defendants' motions for summary judgment. The Defendants may call the use of Walco's bid fair because negotiations in requests for proposals are legal. But such a characterization does not change the fact that the County and Simmons both gained Walco's proprietary bid information by using a competitive bid proposal, then failing to abide by competitive bid requirements.

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<sup>4</sup> Idaho County Commissioners. *Change Difficult; Making Every Effort to Provide this Service*. Idaho County Free Press, 5/07/2013.  
<http://www.idahocountyfreepress.com/ArcStoryPage.asp?Database=Story&StoryID=272>

Respectfully submitted this 29th day of November, 2013.

A handwritten signature in dark ink, appearing to be "Dennis M. Charney", written over a horizontal line.

DENNIS M. CHARNEY  
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

David Risley  
RISLEY LAW OFFICE, PLLC  
P.O. Box 1247  
1443 Idaho Street  
Lewiston, ID 83501  
208-743-5338

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Email

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IDAHO COUNTY DISTRICT COURT  
AT 4:27 FILED P.M.

DEC 16 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and

SIMMONS SANITATION SERVICE, INC.,  
an Idaho corporation,

Defendants.

Case No. CV 42360

PLAINTIFF'S MEMORANDUM IN  
SUPPORT OF CROSS-MOTION FOR  
SUMMARY JUDGMENT

Because Simmons, again, joins Idaho County in Idaho County's response, Walco will reply to both Responses with one brief. From the outset it should be noted that the parties raised unfounded concerns about whether Walco can legally file a cross-motion with respect to a portion of the claims at issue. In fact, the Idaho courts have long held that summary judgment may be decided "on any or all the causes of action involved, under the rule of civil procedure

thus allowing trial courts flexibility in determining the form of relief granted in summary judgment orders. *Brummett v. Ediger*, 106 Idaho 724, 726, 682 P.2d 1271, 1273 (1984) (citing I.R.C.P. 56(a), (b), (c), (d)). . . . and I.R.C.P. 1(a), "These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding."<sup>1</sup> In *Brummett*, the Appellate Court upheld the trial court's determination that the motion for summary judgment in front of it required that the Court "simply determine whether or not the relationship between the parties is that of partners." (Id at *Brummett*). In that case, the parties were in disagreement about whether the parties' arrangement was an unincorporated association or a joint venture. Thus, the trial court decided to "determine just what type, legally, the relationship appears to be." Id. Although it was a legal decision, going forward, the court had established the fact that the arrangement was a partnership. Id. In another case, the Appeals Court found that the trial court "should have ruled as a matter of law that plaintiff appellant was a third party beneficiary of the contract and should have granted the plaintiff partial summary judgment on the issue of its allegation of a third party beneficiary contract."<sup>2</sup> Numerous examples exist wherein the trial court makes just such a narrow determination as Walco has moved the court to do in this case: decide whether the document was an Invitation for Bids or a Request for Proposals. Certainly the Court will need to apply law to make this determination. But once made, it will be a fact deemed established, and the Court will have necessarily framed the issue to be tried by a jury—whether or not the Defendants used the bid and the process following the bid as a means to gain and then misuse Walco's trade secret.<sup>3</sup>

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<sup>1</sup> *Harwood v. Talbert*, 136 Idaho 672, 677 (Idaho 2001).

<sup>2</sup> *Just's v. Arrington Constr. Co.*, 99 Idaho 462, 476 (Idaho 1978).

<sup>3</sup> *Coeur d'Alene Mining Co. v. First Nat'l Bank*, 118 Idaho 812, 820 (Idaho 1990).

On a related note, the Defendants point out that the cross-motion was filed after the deadline for summary judgment motions had passed. The Court will recall, however, that it was the Defendants who refused to respond to repeated requests for depositions, and that the Court had to order them. Walco filed its own motion for summary judgment, in part, with information learned from the depositions. Certainly there is no prejudice to hearing cross motions for summary judgment on the identical issue argued two ways.

With those initial procedural issues aside, Walco will summarily point out errors in the Defendants' briefing. Certainly, Walco's point in its response in opposition to the Defendants' motions for summary judgment should be reiterated here: a pig is a pig is a pig, but a pig is not a cow. While the Defendants have argued that the document and the process following can be called a bid or a proposal, but that it is the characteristics that make it one or the other, the Defendants' Response serves only to confuse that issue more, and, in fact, emphasizes the Defendants' dishonesty during the bidding process through the briefings here.

#### **1. The Charney Letter and Walco's use of the word, "proposal."**

To the extent that the Defendants attempt to show that even the Plaintiff and its attorney believed the process to be a proposal, in the legal sense of an RFP, they err. A complete read of Mr. Charney's letter shows that it was indeed a precursor to the arguments presented to the Court today. The entirety of the letter emphasizes the unfair bid process, the fact that Simmons had been shown Walco's entire bid and was being allowed to undercut it under the guise of public discussions. The small piece lifted from that letter must be reinserted in the context of the letter. Mr. Charney's point was that as of October 26, 2012, Mr. Simmons had been given every opportunity to negotiate with the County with the County continually telling Walco that this was

to be expected under a Proposal. That section of the letter was an attempt to convince the County to negotiate with Walco as it was doing with Simmons if the county was going to deviate from what was obviously intended as a competitive bid. As pointed out in previous briefing, Walco had requested during the October 23, 2012 meeting an opportunity to re-bid. While the County Attorney thought this might be possible, the commissioners disagreed, saying they needed to go with the lowest apparent bidder at that point.

Although the County attorney thought this might be a possibility the Commissioners did not and refused to allow Walco to decrease the services it had bid in order to lower its price so that the two proposals were based on the same services. Instead here is what Walco was told during the final meeting that Walco was allowed to attend on October 23, 2012:

**Mr. Holman:** So can we just tell you right now our bid is \$65,000, and there's a bunch of things in there that we can talk about at negotiations because that would put us in negotiations first. Ours was specific.

**Mr. MacGregor:** I think you can. I think if you want to say that we can sit here and negotiate with whoever we want. Yeah, you can say that.

**Mr. Holman:** That sounds fair. Would that be fair to Robert?

**Commissioner Rockwell:** (Inaudible) I think we should be in negotiations with the apparent low bidder. It's what we're supposed to do. . . . (Exhibit F, Walco Response to Defendants' MSJ, Oct. 23, 2012 Meeting Transcripts p. 90).

The Commissioners shortly thereafter moved to negotiate only with Robert Simmons.

As has been reiterated, and as Mr. Charney's October 26<sup>th</sup> letter pointed out, even then, "Adding insult to injury is the fact that the board won't even entertain the possibility of negotiating with Walco after considering Simmons' best and final offer. In our view, this conduct is highly illegal and it will not go unchecked. If Walco loses the contract after the board has a full and fair deliberative process which considers all factors set forth in the bid: price,

reputation, ability to perform, financial stability, a transfer station in Idaho County, etc...then so be it. At least the process was fair. However, the current "railroad" process employed by the commission to award the contract to Simmons, no matter what the cost and no matter what the deficiencies exist, is one that will not go unanswered...the board should immediately disqualify the Simmons bid [for the deficiencies discussed in the letter] and negotiate with Walco." (Third Supplemental Ackerman Decl. Ex. YY, at 2-3).

Thus, the fact that Walco requested that it be able to negotiate with the County in a manner similar to Simmons, does not prove that the County intended for the document to be a proposal. Of even more import, the County refused to negotiate with Walco, holding them to their original bid price. It was the County who determined the process, not Walco. Walco may have asked that their bid be considered a proposal, but the County flatly refused.

Furthermore, the Defendants failed to rebut Walco's argument that the use of the word "proposal" does not change the nature of an invitation for bids. As noted previously, other procedural and substantive factors, besides simply the use of the word "proposal," should be considered when deciding whether a proposal is one for competitive bids or not. In fact, supporting this contention is Idaho Code § 31-1001, the chapter made applicable in § 31-4402—one of the solid waste systems statutes. That statute states:

[T]he provisions of chapter 10, title 31, Idaho Code, are hereby made applicable for the acquisition of solid waste disposal systems and a solid waste disposal system is declared to be a public building within the definition of chapter 10, title 31, Idaho Code. (See Idaho Code § 31-4402).

Idaho Code § 31-1001 states that when public buildings are erected, the "buildings must be let, after thirty (30) days' notice for proposals, to the lowest bidder who will give security for the completion of any contract he may make respecting the same." (emphasis added). Thus,

Idaho Code, itself, refers to competitive bid notices as “proposals.” Certainly, then, the use of the word “proposal” in the specification description does not preclude this Court from deciding that as a matter of law, the document invited competitive bidding just as is allowed by code.

In fact, the County Prosecutor, Mr. MacGregor posed the central question in this case to Walco during one of the commissioner meetings held after the bids were opened. Note the following exchange:

**Mr. MacGregor:** I mean, James, Mr. Rockwell, is saying apparent. Again, we don’t know who the low bidder—last week we didn’t know who it was for sure because you had raised some points. That’s what we’re trying to find out. And as far as your bid being complete, yes, you know, that’s a very good that you made a complete bid proposal. You know, you did address a lot of those things, but that doesn’t mean we have to pick it just because it’s the more complete bid. I mean--

**Mr. MacGregor:** If your price is \$200,000, and it’s the complete bid, and his [Simmons] is 77, why wouldn’t we go with—

**Mr. Holman:** That’s not the case.<sup>4</sup>

**Mr. MacGregor:** No, but I’m saying . . . she says we should pick her [Marietta Holman for Walco’s bid]—pick you guys because it’s a more complete bid. I don’t agree with that. (Exhibit F, Meeting Transcripts, Oct. 23, 2012, p. 3, ll.2-24).

As the court is aware, competitive bidding is not mandatory under the solid waste statutes— Idaho Code § 31-4403(6)—a County may or may not solicit for competitive bids, but Idaho County did.

(6) Notwithstanding any other provision of law to the contrary, in order to provide for the public health, safety, and well-being, the board of county commissioners and/or another unit of state government, may determine whether solid waste disposal systems services are to be provided by means

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<sup>4</sup> In fact, given the information that Simmons provided during the October 16, 2012 meeting, the Commissioners had agreed that it appeared that the two bids were equal, and that was without including the monthly cost of running an in-county transfer station, which Simmons did not include in his bid.

of a contract, franchise or otherwise, provided for under subsection (2) of this section, or any contract, franchise or otherwise, awarded under subsection (4) of this section, with or without compulsory competitive bidding, (Idaho Code § 31-4403(6)).

To answer Mr. MacGregor's question, the legislature had reason to give counties the option not to use competitive bidding. Such laws are based on the belief that a county may want to or need to pay \$200,000 rather than \$70,000 if it meant that the contractor offered excellent waste disposal services versus "just-getting-by" services: something that ultimately affects the health of every Idaho County resident. In fact, the only reasonable explanation why the County would not focus on whose bid was more complete and instead decided to choose the lowest bid, is that it was not concerned with quality or totality of service over price. Rather, it was most concerned with the lowest price it would have to pay to get the services done as it had specifically outlined in the proposed contract. And that most definitely epitomizes a competitive bid process.

## **2. The issue of non-responsiveness.**

To be fair, neither Walco's nor Simmons' bids answered the requirements to exactitude. This has already been outlined, but it is patently unreasonable for the Defendants to argue that Walco did not meet several criterion such that Walco's bid, if it were a bid, would be disqualified as non-responsive, yet ignore the fact that Simmon's bid was also non-responsive in far more numerous important ways. The following are appended to the Declaration filed in support of Walco's Response to Defendants' MSJ.

First, Simmons admitted his bid failed to include an in-county transfer station as required in the bid proposal:

**Commissioner Rockwell:** I have a couple of questions. The transfer station I guess this could be a question to you, Robert. Because you don't have a transfer station up

here and Walco does just in the grand scheme of things how do you propose or suggest you're going to take care of the county citizens who are used to dumping at the transfer station?

**Mr. Simmons:** This proposal we did was literally doing the route themselves, not putting up any other roll offs at this time to take care of that. . . . that was not part of my proposal. (Exhibit E, Commissioner Meeting Oct. 16, 2012, p. 9).

Later, after being questioned, Simmons admitted that he did not include the fuel surcharge mileage:

**Ms. Holman:** And we have one more question. Does the \$77,000 cover---what is the fuel price of the \$77?

**Unknown Person:** 259 right in the contract that was (inaudible) proposal.

**Ms. Holman:** Okay. Now if we go and add the fuel surcharge with—and he's also going to be traveling an extra 70 miles per truck up to this area because he's got to go back to Kamiah. . . . So now if we add 7,000 onto the 77 or 84 plus the extra tonnage you're at \$87,000 same as ours. [not including cost of no transfer station].

**Commissioner Rockwell:** Robert, what do you think of that?

**Mr. Simmons:** I did not actually do the extra mileage on—for that. (Exhibit E, Oct. 16, Meeting Minutes, p. 18).

In response to Ms. Holman's calculation that the surcharge would be \$7,791 (Exhibit E, p. 17, l. 19)

Simmons stated the following:

**Mr. Simmons:** I did not do the extra mileage on—for that. But we were actually pretty close in the—I think it was (inaudible) figured the five—about 79. But that is where the fuel surcharge is. That's where it's at." (Exhibit E, October 16, 2012, Meeting Transcripts, p. 18, ll. 1-4).

When it became obvious that the two bids, not including the transfer station, were equal or close to it, on

October 16<sup>th</sup>, Simmons asked to come back on October 23.

**Mr. Simmons:** You can fit that in there that I would have to come into executive session and show you the numbers for—if that's the number that is really sticking. . . . We're not talking about consolidated sites at the moment. We're talking about the original bid. If that's the bid price for fuel surcharge at this point in time. I don't



have a problem showing you those numbers in executive session for proprietary reasons.(Exhibit E, Oct. 16, 2012 Meeting Transcripts, p. 31).

Indeed, the Commissioners asked him to come back the following week: Brandt explained the reason at the beginning of the Oct. 23 meeting:

**Commissioner Brandt:** Okay, Commissioners, we're back to talking trash, and where we left if it is Simmons was going to visit about—with us about—Mr. Simmons was going to visit about the additional cost and fuel-age, tonnage, or anything that he would like to share. We've opted not to go into executive session so it's whatever you want to give us in opening. (Exhibit F, Oct. 23, 2012 Meeting Transcripts, p. 47).

Right away Simmons explains his new, significantly lower, monthly fuel charge amount: \$5,100 per month. He then falsely denied that just the week prior he indicated the amount of \$7,900 for monthly fuel prices.

**Mr. Simmons:** No, I didn't say 79.

**Ms. Holman:** Yes.

**Mr. Simmons:** I said I did not know. I said that I would come back. (Walco Response to Defendants' MSJ, Exhibit F, Oct. 23, 2012 Meeting Transcripts, p. 85, ll. 13-15).

But a review of the transcripts from the previous meeting shows that, indeed, Simmons *had* said his amount would be \$7,900 for the fuel surcharge. (Walco's Response in Opposition to Defendants' MSJ, Exhibit F, Oct. 23, 2012 Meeting Transcripts, p. 85, ll. 13-15). Meeting Transcripts, p. 18, ll. 1-4). He never said he didn't know. Nevertheless, Simmons was allowed to continue to wheedle away at his numbers over a week's time until his numbers appeared to be less than Walco's original bid.

Moreover, this argument overlooks that fact that the evaluation factors in the document allowed for deviation from the bid specifications. It stated that an evaluation factor would be: "Total costs under acceptable modifications to the County's proposed contract terms and

allocation of risk.” The problem, of course, is that Simmons’ initial bid failed to provide total costs. And this was of great import because as the County Attorney pointed out during the hearing: Cost was the most important factor.

**Exhibit F (Walco’s Response in Opposition), October 23, 2012 Meeting Transcript**

**Commissioner Brandt:** This is what I’ve been crunching, which trying to get to apples to apples, and we started out with what I looked at is I’m trying – I still haven’t figured out what the justification for Marietta and Patrick’s realm of the \$87,000 a month. (p. 48).

....

**Commissioner Rockwell:** (Inaudible) I think we should be in negotiations with the apparent low bidder. It’s what we’re supposed to do. . . .(p. 90).

**Mr. MacGregor:** We weren’t sure if he was low was my understanding that’s why we wanted to come back today. You guys were saying he was not the low, and we were listening to you. (p. 91).

**Mr. MacGregor:** Well, one of the evaluation criteria is the cost, I mean, (inaudible.) . . . But I’m assuming you would agree that was the most important factor of the bid was the cost. (p. 93).

....

**Commissioner Rockwell:** I’m just asking the number. (p. 94)

....

**Commissioner Schmelik:** Have we hashed this out enough? Well, I make a motion (inaudible) Simmons.(p. 13).

**Commissioner Rockwell:** I second that. The current low bidder.(Id.)

**Commissioner Schmelik:** The current low bidder. (Id.)

**Commissioner Brandt:** Motion has been made and seconded. Any further discussion? All those in favor say, aye. (Id.)

(In unison, Aye.)

Besides, Walco’s argument does nothing to prove or disprove the issue of whether the document was inviting bids. Moreover, the issue is whether the Defendants misappropriated a

trade secret. Walco has a case because cost was the most important factor to the County—the hallmark of a bid process. And since Simmons did not give its final cost until several meetings after Walco's had been made known, Walco was damaged by not being allowed to underbid Simmons as he had underbid them.

**3. The plain language of the document proves it is a bid.**

The Defendants agree that a bid is a price to perform a set contract. The County seemingly argues that because the County requested that sites be consolidated and does not direct where or how they are to be consolidated, that this proves the County was looking for ideas about how to do this. Yet, again, the proposal does not ask for ideas about how to do this or plans for doing it. It simply says it will be a future requirement after the contract is awarded. In fact, Walco argued during the hearing that Walco had complied by offering both a modified and unmodified approach to the sites. It was clear during the hearing that Simmons had not done so. Thus, this only goes to prove that the County was most concerned with total price and not alleged proposal ideas.

Further, the point that the RFP reserved discretion for the County to use the evaluation factors or not fails to prove the document was not actually an invitation to bid. In effect, the Defendants argue that the County reserved its right to treat it like an invitation for bids. And although it said that the County reserved the right to allow responders to supplement omissions or modify the proposal, in actuality, the County only allowed one responder to modify his bid and only with respect to cost and only after Walco had given its final numbers.

Of import, while the Defendants highlight the supposed fact that the bid allowed modifications and even “invites” modified contract terms, this did not occur. Numerous times the

commissioners stated that Walco had not been responsive, had not met the specifications of the proposal and that they wished it had. Several minutes after opening the sealed bid, the commissioners said:

**Commissioner Brandt:** All right. This is a good meeting. We have one subject. [opens bids] Okay, the first one was Simmons Sanitation, and they have—well, they've got a base price of \$77, 202 per month (inaudible) some detail—vague detail. And then we have Walco (inaudible) letter, and they have a base price of \$87,000 and a lot more detail. (Meeting Transcripts, p. 2, ll. 10-16.)

[clerk makes copies of the two bids and brings  
copies back for all commissioners.]

**Commissioner Rockwell:** Not really, though. What we said was we were using the contract with the surcharge.

**Commissioner Chmelik:** Right.

**Commissioner Rockwell:** So if you [Walco] don't use that contract, it's basically non-responsive. We can run the numbers and we should (inaudible) and it has a surcharge. ( Walco's Response in Opposition to Defendants' MSJ, Exhibit D, Meeting Transcripts, p. 6, ll. 6-13.)

**Exhibit E (Walco's Response in Opposition to Defendants' MSJ), October 16, 2012 Meeting Transcripts**

**Commissioner Rockwell:** Just as a for instance we asked you to bid a specific contract and specific ideas in that contract, and you chose not to—  
.... (p. 25)

**Commissioner Rockwell:** Patrick, I wish you would have bid as we requested because— (p.27)

**Commissioner Rockwell:** You say a five percent. His is what we had in the contract (inaudible) which was a surcharge (inaudible.) (p. 27).

**4. The relevant law emphasizes that cost is the main factor in a bid, but not in a proposal.**

While the Defendants point out what it feels are considerable mischaracterizations of the bid document or the law cited to, it fails to defend against the main point of each of the cases

Walco relies on: cost. Each of the cases notes that when cost is the key issue, then it cannot be a request for a proposal. And while the Defendants do not like such a narrow interpretation, this is indeed the law. Of course, this is problematic given the County's reliance on cost throughout the entire process. As to the discrepancies the Defendants point to:

A) A budget was included within the document because proposed contract listed the bid amount that the county believed would cover the costs associated with the required services.

B) Defendants refuse to discuss the ways in which *Dana* does narrow the definition of an RFP.<sup>5</sup> Certainly in the case, the document that the Court was analyzing included the term "for information and planning purposes only." (Id.) However, that term was then construed by the *Dana* Court as a reason why the RFP was and RFP. In this case, no like statement is included. And, unlike the RFP in *Dana*, "Cost—the primary criteria upon which bids are awarded" was mentioned several times. And as the County Attorney pointed out, cost was the main evaluation factor.

C) Although the County argues it did not follow bid procedures because no bid form by the name of "bid form" was made available, it fails to fairly acknowledge that the RFP forms which included the proposed contract were made available to interested parties.

D) The Defendants argue the invitation to bid provided much room for contractor decisions, yet during the entirety of the hearings, the Commissioners made a point to remind Walco that it had failed to meet the County's very specific criterion. How to consolidate sites may have been an issue that the parties would have to consider down the road, but it was not part of the 2012 decision of choosing a contractor. The commissioners simply wanted to know whether the contractor was willing to do so, not the specifics as to how the contractor planned to

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<sup>5</sup> *Dana v. Bd. of Comm'Rs*, 124 Idaho 794, 795-802 (Idaho Ct. App. 1993).

do so. And furthermore, the fact that Walco had a centrally located in-county transfer station that would facilitate consolidation, was a fact that the Commissioners chose to ignore rather than rely on as an evaluation factor.

E) It was apparent that the County would not accept modified terms, and this was the reason that Walco's bid was in fact deemed non-responsive and disqualified during the first five minutes of the first meeting and into the next three meetings. In fact, the document did mandate the services that it wanted done. Anything proposed that went beyond or outside that mandate was deemed "non-responsive." This goes to proving Walco's point, not the Defendants.

F) *Dana*, and the related cases, stand for the fact that if a decision is made based largely on cost, then the RFP was actually soliciting bids.<sup>6</sup> The *Dana* decision specifically says that documents such as this sometimes are, in fact, solicitations for bids, and that is Walco's contention here.(Id.) Even if the County's RFP was called an RFP, it was actually a solicitation for bids.

G) The document and process did meet bidding statutes because the board of commissioners did publicize the bid proposal and the documents were available.

H) The Proposed Contract did require that a transfer station be in Idaho County. That section of the proposed contract is on p. 5, under V. 5.1 and states, "Operation of a Transfer Station and Landfill. The Contractor shall operate or lease a transfer station within Idaho County." Additionally, Simmons' Original Proposal did not specify the use of the Simmons Sanitation transfer station as the Defendants argue. In fact, Simmons made clear during the hearings that his proposal did not include the cost of leasing or building a transfer station in Idaho County.

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<sup>6</sup> *Dana v. Bd. of Comm'Rs*, 124 Idaho 794, 795-802 (Idaho Ct. App. 1993).

**Commissioner Rockwell:** I have a couple of questions. The transfer station I guess this could be a question to you, Robert. Because you don't have a transfer station up here and Walco does just in the grand scheme of things how do you propose or suggest you're going to take care of the county citizens who are used to dumping at the transfer station?

**Mr. Simmons:** This proposal we did was literally doing the route themselves, not putting up any other roll offs at this time to take care of that. . . . that was not part of my proposal. (Walco's Response in Opposition to Defendants' MSJ, Exhibit E, Commissioner Meeting Oct. 16, 2012, p. 9).

That was one cost that he was allowed to define after Walco's was already known. Walco was not allowed to modify its bid by decreasing those operating costs as the Defendants suggest. Defendants have skewed the issue, again, just as in the hearings, and still will not have a frank discussion about why Simmons was found to be the apparent lowest bidder when costs such as a required in-county transfer station were not included in his bid. Walco's response to the defendant's motion for summary judgment outline further costs that were not totaled.

I) The Court should not deny Walco's motion, because although Walco submitted a contract with modifications, the County refused its bid from the start and reiterated that reasoning to the end because it decided Walco's bid was purportedly modified when it should not have been and was the higher bidder.

**Exhibit E, October 16, 2012 Meeting Transcripts**

**Commissioner Rockwell:** [O]ur business is to create a county-wide collection system, which we asked you to bid. You bid. We asked Robert to bid, and he did. So it's apples to apples there when I'm looking at the numbers. (p. 23)

**Commissioner Rockwell:** (inaudible) If you tell us your number is \$82,000 I'm going to take that number. Robert tells us his number is whatever it is (inaudible) take that number. Again, I don't want to throw anything in here that's extra. (p.25)

**Commissioner Rockwell:** You shouldn't be talking for him, though, or vice-versa I think relative to numbers. If he tells us his number I've got to count on that, and that's the check we're going to write. (p. 25)

**Commissioner Rockwell:** Just as a for instance we asked you to bid a specific contract and specific ideas in that contract, and you chose not to—  
.... (p. 25)

**Commissioner Rockwell:** Patrick, I wish you would have bid as we requested because— (p.27)

**Commissioner Rockwell:** You say a five percent. His is what we had in the contract (inaudible) which was a surcharge (inaudible.) (p. 27).

**Commissioner Rockwell:** So I don't have any other questions, Skip. I had one thought that maybe we enter into negotiations with the current low price bid and if that is unsuccessful we move onto the second low bidder. I don't know how we're going to do this but-- . . . Walco believes both numbers are similar. Simmons believes his is less expensive by \$5,000. (p. 30).

**Mr. MacGregor:** I couldn't remember when we put it out for bid, did we set a deadline after the bids came in? . . . You may want to consider – I mean, just look at this and consider what Walco is saying and make sure. (p. 30).

**Commissioner Rockwell:** I'm saying I think it's necessary not to award (inaudible) enter into discussions with the current low bidder, and then find out some (inaudible) if it is true of the two numbers—after talking with Robert the two numbers are identical then we have a different animal. (p. 30-31).

**Mr. MacGregor:** Right. I agree. (p. 31).

**Commissioner Chmelik:** I would be really interested to know (inaudible). Without that number it's not on this bid (inaudible). (p. 31).

....  
**Commissioner Brandt:** Okay. I see we need to crunch a lot more numbers. (p. 34).

....  
**Mr. MacGregor:** I would say table it for a month—I mean, for a week—for a week and crunch some of the numbers. (p. 35).

....

**5. Walco's background information does not misstate the record and is relevant.**

A) The fact that the County negotiated with Walco exclusively before accepting Walco's invitation out to bid has no bearing one way or the other on this issue. It may support Walco's contention that the County was set against contracting with Walco; however, that was not



Walco's point. The point was that Walco had requested that the contract be put out to bid and the County did so. The Defendants do not deny this fact.

B) The Email from Brandt to Robert Simmons suggests that Brandt had a close relationship with Robert Simmons. The brief said that the commissioners, upset at Walco's refusal to agree to certain recycling terms, was the cause of the commissioners decision to ultimately bid the contract out versus settling on a contract with Walco. The Defendants do not deny that Robert Simmons and Brandt are long standing friends outside of business. Both parties agreed this was true during depositions.

C) The Defendants point out that the County continued to consider the differences in the contracts because Walco asked them to, not because the County chose to on its own. Of import, the County points out that the main discussion at subsequent meetings was cost. This is supported by the County Attorney's synthesis of the previous meetings and the reason for the last one wherein Walco was allowed to discuss its contract. That discussion is transcribed above.

D) While the Defendants have gone to lengths to argue that the proposal was a proposal because anyone could modify it and modifications were welcome, it complains that the problem with figuring out which bid was lower was that Walco "proposed to change the entire proposed pricing structure, which the parties had carefully negotiated and used for several years. . . .Walco's proposal, not Simmons' threw a wrench in the entire process."(Response p. 16-17). Finally, it concludes that Walco's proposed 5% annual base rate, "justified the Commissioners in choosing to begin contract negotiations with Simmons first. But they did not. They listened to Walco's arguments for over three hours over two weeks' time."(Id. p. 17). Again, those meeting focused on cost, just as the Defendants' conclusion does. Moreover, Walco was not allowed to re-bid at a lower cost.

## CONCLUSION

The motion for summary judgment filed by the Defendants must be denied and the cross motion filed by the Plaintiff should be granted. There is simply no material issue of disputed fact with respect to nature of the document in question. It was an invitation to bid. This is clear from the document itself as well as the importance the commissioners placed on the cost of services to be provided. Since the document was an invitation to bid, information offered in response to that bid was proprietary and not to be shared with other bidders until the board made a final decision with respect to the vendor. The value of this information was made clear to the county by way of the initial letter from Mr. Charney as well as the manner in which the bid was delivered and handled by the county clerk. Simmons knew that the information was valuable as he insisted on safeguarding the same type of information generated by his company. Nevertheless, the county shared, and Simmons utilized Walco's proprietary information in order to afford Simmons the opportunity to underbid Walco because the county had pre determined that Walco, even if it was the low bidder, would not be the recipient of the contract. Accordingly, the Court should rule in favor of the Plaintiff and against the Defendants on this issue.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of December, 2013.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Dennis M. Charney.

---

DENNIS M. CHARNEY  
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

David Risley  
RISLEY LAW OFFICE, PLLC  
P.O. Box 1247  
1443 Idaho Street  
Lewiston, ID 83501  
208-743-5338

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

Bentley G. Stromberg  
CLEMENTS, BROWN & McNICHOLS, PA  
321 13th Street  
Lewiston, ID 83501  
(208) 743-6538

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
\_\_\_\_\_  
CHERYL GAMMON

DENNIS M. CHARNEY ISB# 4610  
CHARNEY AND ASSOCIATES, PLLC  
1191 East Iron Eagle Dr., Ste. #200  
Eagle, ID 83616  
Telephone: (208) 246-8850  
Facsimile: (208) 938-9504

Attorney for Plaintiff

IDAHO COUNTY DISTRICT COURT  
AT 4:34 FILED P.M.

DEC 16 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and

SIMMONS SANITATION SERVICE, INC.,  
an Idaho corporation,

Defendants.

Case No. CV 42360

CHERYL GAMMON'S  
DECLARATION

Pursuant to Idaho Code § 9-1406, CHERYL GAMMON, hereby declares:

1. I am an adult citizen of the United States, competent to testify as a witness and make this declaration on personal knowledge. I am the legal assistant to Dennis M. Charney, attorney of record for Walco.
2. The documents attached hereto as Exhibits A through F are true and correct copies of transcripts of three Idaho County Commissioner Meetings and three depositions.

CHERYL GAMMON'S DECLARATION - 1


1660

Exhibit G is a true and correct copy of a letter Dennis M. Charney wrote and sent to the Idaho County Commissioners on June 7, 2012.

3. Exhibit A is a copy of a portion of James Rockwell's deposition testimony taken on November 4, 2013.
4. Exhibit B is a copy of a portion of Skip Brandt's deposition testimony taken on November 4, 2013.
5. Exhibit C is a copy of a portion of James Chmelik's deposition testimony taken on November 4, 2013.
6. Exhibit D is a copy of a portion of the transcript of the October 15<sup>th</sup>, 2012 Idaho County Commissioner's Meeting.
7. Exhibit E is a copy of a portion of the transcript of the October 16, 2012 Idaho County Commissioner's Meeting.
8. Exhibit F is a copy of a portion of the transcript of the October 23, 2012 Idaho County Commissioner's Meeting.
9. Exhibit G is a copy of a letter Dennis Charney sent to the Idaho County Commissioners on June 7, 2012.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 29<sup>th</sup> day of November, 2013.

  
Cheryl Gammon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

David Risley  
RISLEY LAW OFFICE, PLLC  
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---

Dennis M. Charney

**EXHIBIT A**  
**James Rockwell Deposition**



1 IN THE SECOND JUDICIAL DISTRICT,  
2 SITTING WITHIN AND FOR IDAHO COUNTY,  
3 STATE OF IDAHO

4  
5 WALCO, INC., an Idaho Corporation,  
6 Plaintiff,  
7 vs.  
8 COUNTY OF IDAHO, a political  
9 subdivision of the State of Idaho,  
10 and SIMMONS SANITATION SERVICE,  
11 INC., an Idaho Corporation,  
12 Defendants.

13 TRANSCRIPT OF THE DEPOSITION OF JAMES ROCKWELL  
14 HAD ON THE 4TH DAY OF NOVEMBER, 2013, AT 9:00 AM

15  
16  
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18  
19  
20  
21  
22  
23  
24  
25 REPORTED BY: KRISTY LYNN EVANS, RPR, CSR NO. 661

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1 INDEX

2 Deposition Exhibit No. 1 - Letter of June 7, 2012  
3 Deposition Exhibit No. 2 - Proposal  
4 Deposition Exhibit No. 3 - Simmons summary proposal  
5 Deposition Exhibit No. 4 - Envelope front/Kathy Ackerman  
6 Deposition Exhibit No. 5 - Solid Waste Management System  
7 Deposition Exhibit No. 6 - Walco's bid proposal

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3

1 APPEARANCES

2 For the Plaintiffs: MR. DEEMIS W. CHARNNEY  
3 Charnney and Associates  
4 1191 East Iroc Drive, Suite 200  
5 Eagle, ID 83616

6 For the Defendants:  
7 Simmons Sanitation MR. DAVID R. RISLEY  
8 Attorney at Law  
9 P.O. Box 1247  
10 Lewiston, Idaho 83501

11 For the Defendants:  
12 Idaho County

13 MR. BENTLEY G. STROMBERG  
14 MR. JOSEPH D. MCKINCHER  
15 Clements, Brown & McRichols  
16 321 13th Street  
17 Lewiston, Idaho 83501

18 Also Present: Mr. Robert Simmons  
19 Mr. Patrick Holman  
20 Ms. Marietta Holman  
21  
22  
23  
24  
25

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2

1 BE IT REMEMBERED that the above-entitled matter  
2 came on for deposition at the hour of 9:00 a.m., November  
3 4th, 2013, at the Super 8 Conference Room, City of  
4 Grangeville, County of Idaho, State of Idaho.

5 [Thereupon the following oral proceedings  
6 were had as follows, to-wit:]

7 JAMES ROCKWELL

8 after having been first duly sworn,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CHARNNEY:

12 Q. Will you please state your name spelling your  
13 last for the Court Reporter.

14 A. My name is James Rockwell, R-o-c-k-w-e-l-l.

15 Q. Where do you currently reside?

16 A. Grangeville.

17 Q. How long have you lived in Grangeville?

18 A. Since about '97.

19 Q. Okay. Where did you live prior to that?

20 A. Hanoi, Vietnam and then Anchorage, Alaska,  
21 and then I was born and raised in Grangeville.

22 Q. All right. You are currently a County  
23 Commissioner for Idaho County, correct?

24 A. Correct.

25 Q. How long have you been an Idaho County

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1 Q. I then said, my clients would like to  
2 participate in the bidding process so when the RFP is  
3 sent out we would appreciate receiving a copy. Did you  
4 or any of the other Commissioners that you are aware of  
5 see to it that Walco got a copy of the RFP?  
6 A. I don't know that. We would have put an ad  
7 in the newspaper for requesting proposals, and from  
8 that there would have been a detailed way to get the  
9 RFP and respond to it.  
10 Q. So, do you recall when the RFP was created  
11 emailing it to either Marietta or Patrick?  
12 A. I don't recall that.  
13 Q. Do you know why Skip Brandt elected to send  
14 one to Robert but not to Patrick and Marietta?  
15 A. I don't know that.  
16 Q. Did you tell him to do so?  
17 A. I did not.  
18 Q. Next paragraph, we wrote: With respect to  
19 Walco's proprietary information we respectfully request  
20 that any proprietary information held by the County be  
21 retained by the County and treated as exempt under the  
22 Idaho Public Records Act. Did you see that sentence?  
23 A. Sure.  
24 Q. Did you comply with it?  
25 MR. STROMBERG: Objection, ambiguous.

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1 meeting. That's not proprietary. What do you think is  
2 proprietary?  
3 Q. Okay. Again, I ask the questions in a  
4 deposition.  
5 A. I'm just trying to get you to clarify  
6 proprietary. What is it? What was presented that was  
7 proprietary?  
8 Q. We'll get there, but don't think that you are  
9 going to ask me questions in a deposition unless it is  
10 to clarify a question.  
11 A. Well, I'm clarifying a question.  
12 Q. My question to you was: Did you, personally,  
13 take any steps to try and preserve the integrity of any  
14 information that you thought might be proprietary? Yes  
15 or no?  
16 MR. STROMBERG: Objection, speculative.  
17 Ambiguous. Calls for a legal conclusion. You can  
18 answer.  
19 A. None. Neither -- neither. I didn't do that.  
20 I didn't realize there was proprietary information that  
21 needed protected, and it is not the job.  
22 Q. (By Mr. Charney) Okay. So your answer is,  
23 no, you did not take steps to protect proprietary  
24 information?  
25 A. I didn't know there was any.

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1 A. As far as I know. What is your proprietary  
2 information?  
3 Q. (By Mr. Charney) In a deposition I ask the  
4 questions, okay. Did you comply with it?  
5 MR. STROMBERG: Objection, ambiguous.  
6 A. As far as I know.  
7 Q. (By Mr. Charney) Did you make any attempt to  
8 comply with it?  
9 MR. STROMBERG: Objection, ambiguous.  
10 A. As far as I know.  
11 Q. (By Mr. Charney) Let me ask you this: What  
12 steps did you personally take to ensure that Walco's  
13 proprietary information held by the County was retained  
14 as exempt under the Public Records Act?  
15 MR. STROMBERG: Objection, ambiguous. It also  
16 calls for a legal conclusion. He can't know what you  
17 mean by proprietary.  
18 A. I don't know.  
19 MR. CHARNEY: I'm asking him what steps he took.  
20 A. I don't know what you mean by proprietary  
21 information.  
22 Q. (By Mr. Charney) Did you look at, say, for  
23 the file, for example the file, and determine, well, we  
24 should or should not release such and such information?  
25 A. This is information in an open and public

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1 MR. STROMBERG: Same objection.  
2 Q. (By Mr. Charney) Did you ask?  
3 A. Who?  
4 Q. The other Commissioners, your attorney, if  
5 any of the information that Walco submitted was  
6 potentially proprietary?  
7 MR. STROMBERG: Objection to the extent it calls  
8 for attorney-client privileged information. You can't  
9 tell him what you asked your attorney. Over that  
10 objection you can answer the remainder of the question.  
11 A. Okay. All the information that I was aware  
12 of relative to Walco was presented to us in the public  
13 arena.  
14 Q. (By Mr. Charney) Okay.  
15 A. So, do you protect public arena information?  
16 Q. Are you trying to ask me a question again?  
17 A. Yeah. I'm trying to clarify. You think  
18 there is proprietary stuff that was given to us, and  
19 I'm not sure what that is.  
20 Q. At the conclusion of your read of this letter  
21 was there anything in this letter that offended you,  
22 personally?  
23 A. No.  
24 Q. Did you find it to be professional in that we  
25 had a difference of opinion, and we suggested a

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1 obligation, how much money did he save?  
 2 MR. STROMBERG: Objection, speculative, calls for  
 3 legal conclusion. You can answer.  
 4 A. Yeah. I don't know what you are asking. I  
 5 don't have the information from Walco or from Simmons  
 6 what it cost. I don't know what --  
 7 Q. (By Mr. Charney) I guess my question is this  
 8 --  
 9 A. Yeah.  
 10 Q. -- you're concluding that Mr. Simmons is the  
 11 apparent low bidder?  
 12 A. I am.  
 13 Q. In the absence of knowing his fuel surcharge,  
 14 in the absence of knowing what his tonnage average  
 15 would be, while excusing him from a rather hefty  
 16 financial obligation of operating a transfer station  
 17 that you say shall be in Idaho County, so how did you  
 18 arrive at the conclusion that he was apparent low  
 19 bidder in the absence of knowing those numbers?  
 20 MR. STROMBERG: I need to state a whole bunch of  
 21 objections: Ambiguous, argumentative, assumes facts  
 22 not in evidence, but over those objections you can  
 23 answer, if you can.  
 24 A. Because Walco came in at \$7,000 with a 5  
 25 percent guaranteed increase per year, and Simmons came

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1 he's not in violation.  
 2 Q. (By Mr. Charney) Okay. Who gets the taxes  
 3 for the transfer station that he owns, Idaho County or  
 4 another County?  
 5 A. Another County.  
 6 Q. Okay. Now, when we talk about the transfer  
 7 station you had indicated that the idea of the transfer  
 8 station was a matter of convenience for the citizenry,  
 9 right?  
 10 A. It is.  
 11 Q. And, in fact, you, yourself, regularly use  
 12 the Walco transfer station as a means of convenience  
 13 for you?  
 14 A. I do.  
 15 Q. You are not going to drive all the way to  
 16 Robert's if you can go to theirs five miles away, are  
 17 you?  
 18 A. I live in Grangeville so it doesn't apply to  
 19 me.  
 20 Q. Well, actually it's not a requirement, but  
 21 that's another topic for another day. But let's say  
 22 that you live in White Bird or any place south and west  
 23 of Grangeville. What's the most convenient location,  
 24 Robert's or Walco's?  
 25 MR. STROMBERG: Objection, speculative, but you

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1 in at \$7,000 with a CPI increase or not, plus a  
 2 surcharge. The numbers were pretty basic.  
 3 Q. (By Mr. Charney) Yeah, the numbers are basic  
 4 if you don't have to put all your numbers in, though,  
 5 wouldn't you agree?  
 6 MR. STROMBERG: Objection, argumentative,  
 7 speculative. You can answer.  
 8 A. I will neither agree nor disagree. I'm  
 9 telling you how we got to apparent low bidder.  
 10 Q. (By Mr. Charney) Now, when we talk about the  
 11 location of the transfer station it was your view that  
 12 because he was close, but not within, that that would  
 13 be okay, right?  
 14 MR. STROMBERG: Objection. At what point in  
 15 time?  
 16 MR. CHARNEY: When they said that the transfer  
 17 station that Simmons had was fine, I guess.  
 18 A. Simmons operates a transfer station and has  
 19 under contract for Idaho County for decades, and it is  
 20 not in Idaho County.  
 21 Q. (By Mr. Charney) So he's been in violation  
 22 for all these years?  
 23 MR. STROMBERG: Objection, ambiguous. What are  
 24 you talking about?  
 25 A. In my mind as the executive of the County

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1 can answer.  
 2 A. Riggins would be the most convenient if you  
 3 live in Riggins, and if you live in Cottonwood,  
 4 Cottonwood would be the most convenient. Kamiah is  
 5 actually, I think, within a mile -- if you live in  
 6 Cottonwood you got to drive to the Simmons. It is one  
 7 mile more than driving to Walco. So, we are right  
 8 there.  
 9 Q (By Mr. Charney) Un-huh.  
 10 A. Same with Ferdinand. There are many places  
 11 in the County that are serviced on an equal basis.  
 12 Q. But if you live in this general area right  
 13 here in the service area, Walco's is generally closer  
 14 than Simmons', correct?  
 15 A. To some degree -- excuse me.  
 16 MR. STROMBERG: Objection, ambiguity as to the  
 17 word service area and generally.  
 18 Q (By Mr. Charney) Service area as the service  
 19 area defined in the proposed contract.  
 20 A. To some people, yes.  
 21 Q. To some or to most?  
 22 A. To some.  
 23 Q. If you live anywhere south of Grangeville,  
 24 which is closer?  
 25 A. I haven't --

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**EXHIBIT B**  
**Skip Brandt Deposition**

IN THE SECOND JUDICIAL DISTRICT,  
SITTING WITHIN AND FOR IDAHO COUNTY,  
STATE OF IDAHO

WALCO, INC., an Idaho Corporation,  
Plaintiff,  
vs.  
COUNTY OF IDAHO, a political  
subdivision of the State of Idaho,  
and SIMMONS SANITATION SERVICE,  
INC., an Idaho Corporation,  
Defendants.

TRANSCRIPT OF THE DEPOSITION OF SKIP BRANDT  
HAD ON THE 4TH DAY OF NOVEMBER, 2013, AT 1:17 PM

REPORTED BY: KRISTI LYNN EVANS, RPR, CSR NO. 661

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Deposition Exhibit No. 7 - Skip Brandt email  
Deposition Exhibit No. 8 - Wulf email  
Deposition Exhibit No. 9 - Skip Brandt email  
Deposition Exhibit No. 10 - Cellphone records

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3

APPEARANCES

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1191 East Iron Drive, Suite 200  
Eagle, ID 83616

For the Defendants:  
Simmons Sanitation MR. DAVID R. RISLEY  
Attorney at Law  
P.O. Box 1247  
Lewiston, Idaho 83501

For the Defendants:  
Idaho County

MR. BENJAMIN G. STROMBERG  
MR. JOSHUA D. MCRAUCHER  
Clements, Brown & McNichols  
321 13th Street  
Lewiston, Idaho 83501

Also Present: Mr. Robert Simmons  
Mr. Patrick Holman  
Ms. Marietta Holman

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2

BE IT REMEMBERED that the above-entitled matter  
came on for deposition at the hour of 1:17 p.m., November  
4th, 2013, at the Super 8 Conference Room, City of  
Grangeville, County of Idaho, State of Idaho.

(Thereupon the following oral proceedings  
were had as follows, to-wit:)

SKIP BRANDT

after having been first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHARNEY:

Q. Will you please state your name spelling your  
last for the Court Reporter.

A. Rocky Skipper Brandt, B-r-a-n-d-t.

Q. Tell me a little bit about yourself. Where  
did you grow up, go to school, et cetera.

A. Born and raised in Kootenai, Idaho. Actually,  
I was born up here but raised in Kootenai and went to  
Clearwater Valley High School. Attended the University  
of Idaho, and now I'm a County Commissioner.

Q. What did you go to U of I for?

A. Engineering.

Q. Did you graduate?

A. Nope.

Q. Okay, and when you moved back here when was

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COPY

1 Mr. Simmons regarding some information I want to say  
2 about the recyclers. Oh, okay, I sent Mr. Simmons the  
3 email that I received from Sunshine.  
4 Q. All right. So, let's break this down a  
5 little bit. Sunshine comes to you after seeing  
something in the paper and says, can we talk about this  
contract?  
8 A. Uh-huh (affirmative.)  
9 MR. STROMBERG: That's a yes?  
10 A. Yes.  
11 Q. (By Mr. Charney) Do you have a face-to-face  
12 meeting or a telephone meeting?  
13 A. They come to Kooskia.  
14 Q. And met where?  
15 A. At one of the restaurants in Kooskia, Kooskia  
16 Cafe.  
17 Q. All right. You meet with them for  
18 approximately how long?  
19 A. It was a lunch.  
20 Q. So, lunch on July 5th?  
21 A. Very well could be. The dates are --  
22 Q. Concluding that because there is an email  
23 from Steve sent on Friday, July 6th, saying  
24 Commissioner, thank you for taking the time to meet  
25 with Shawn and I yesterday?

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you recall receiving this letter whereby I make a  
2 specific request that Walco's proprietary information  
3 that is held by the County be retained by the County  
4 and treated as exempt under the Public Records Act.  
5 A. Is that in this --  
6 Q. June 7th letter, Exhibit 1.  
7 A. Exhibit 1.  
8 Q. Middle paragraph.  
9 MR. STROMBERG: First sentence.  
10 A. Okay.  
11 Q. (By Mr. Charney) With respect.  
12 A. Yeah. Okay, yes.  
13 Q. Did you see that at or about the time I sent  
14 this?  
15 (Ms. Holman left the room.)  
16 A. I am sure that I did because I read the  
17 letter.  
18 Q. (By Mr. Charney) So let's go back to the  
19 email from Steve on July 6th. He would like to review  
20 the Walco letter. He appreciates the information.  
21 Then he provides to you some information regarding  
22 costs, correct?  
23 A. Correct, Whitman County contract.  
24 Q. Whitman County?  
25 A. Yeah.

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1 A. Okay.  
2 Q. So a lunch meeting on July 5th, right?  
3 A. Yep.  
4 Q. And he provided to you a copy of the Whitman  
5 County disposal contract and a newspaper clipping about  
6 the bid process, correct?  
7 A. I do believe so.  
8 Q. Now, he says I would like to review the Walco  
9 letter before contacting them about potentially leasing  
10 their transfer station. Which Walco letter are you  
11 referring to?  
12 A. There was a letter that you sent us that  
13 suggested that we notify any potential bidders that  
14 they were willing to lease their transfer site.  
15 Q. Let's move back to Exhibit 1 and take a look  
16 at the last paragraph in that letter.  
17 A. Okay. That's the one where you go month to  
18 month.  
19 MR. STROMBERG: Actually, the last paragraph says  
20 if you have any questions regarding this please feel  
21 free to contact me. That's true as well?  
22 A. That's true, that's the last paragraph.  
23 Q. (By Mr. Charney) There was a different  
24 letter, but we won't go into it. Going back to the  
25 June 7th letter, before we go back to Exhibit No. 9, do

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1 Q. Over in Washington?  
2 A. Yes.  
3 Q. You received this at 12:45 p.m. on July 6th,  
4 correct?  
5 A. Yes.  
6 Q. Now, exactly 21 minutes --  
7 MR. STROMBERG: I need to correct that. It says  
8 sent at 12:45 p.m. We don't know from this when he  
9 received it, but it does say sent to him at 12:45.  
10 Q. (By Mr. Charney) Okay. Do you know when you  
11 received it?  
12 A. So, I do not.  
13 Q. Well, at the very top here, might be somewhat  
14 helpful, in that letter in the email from Steve he asks  
15 who the president of the Idaho County recyclers is.  
16 Where is that? Yeah, here it is, in the biggest  
17 paragraph, the last sentence, you are also going to  
18 give me the contact name and phone number of the person  
19 running the voluntary recycling program? Do you see  
20 that?  
21 A. Yep.  
22 Q. Top of this page it indicates at 12:45 you  
23 responded to that question?  
24 A. Yeah. Okay.  
25 (Ms. Holman back in attendance.)

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1 competing bidder with Walco? Yes or no.  
2 A. He gave us a separate proposal.  
3 Q. Was he a competing bidder? Was he competing  
4 for the same contract against Walco?  
5 A. Yes.  
6 Q. Had you made decision yet on October 15th who  
7 you were going to go with?  
8 A. No.  
9 Q. So why would you then feed him all of their  
10 information so he could use that?  
11 MR. STROMBERG: Objection, argumentative, calls  
12 for speculation. Assumes facts not in evidence. You  
13 can answer.  
14 MR. CHARNEY: He just admitted that he fed him  
15 the information. The facts are absolutely in evidence.  
16 I think you are just making the objections to hear  
17 yourself here at some point.  
18 MR. STROMBERG: We don't need to argue. I am  
19 making my objections simply and plainly and in  
20 accordance with the rules.  
21 MR. CHARNEY: Would you like a standing  
22 objection?  
23 MR. STROMBERG: No.  
24 MR. CHARNEY: Or waive objections as to form?  
25 MR. STROMBERG: Absolutely not.

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A. I very well could have.  
2 Q. Did you say to him, I haven't really fully  
3 explored the implications of this yet?  
4 A. I could have.  
5 Q. Was that a thought that you were having at  
6 the time?  
7 A. No idea.  
8 Q. Okay. It says -- did you tell him the price  
9 applies to current services and routes?  
10 A. I have no idea.  
11 Q. Did you tell him that they did bid the  
12 ten-year term?  
13 A. I have no idea.  
14 Q. We are going 27 and a half minutes of  
15 conversation here. Did you tell him that they agreed  
16 to all the other terms in the contract that was part of  
17 the bid proposal?  
18 A. Don't know.  
19 Q. Did you tell him that they set forth their  
20 qualifications in all their other people they contract  
21 with?  
22 A. I doubt that.  
23 Q. Did you tell him they submitted a letter from  
24 a bank?  
25 A. Doubt that.

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1 Q. (By Mr. Charney) Okay. So, why would you  
2 provide a competing bidder all of the competition's  
3 information that they submitted?  
4 MR. STROMBERG: Objection, argumentative.  
5 Assumes facts not in evidence. He said he didn't read  
6 it word-for-word to Robert Simmons. Over the objection  
7 you can answer the question.  
8 A. He called and asked me -- more than likely  
9 asked me for some details.  
10 Q. (By Mr. Charney) Yes.  
11 A. And I would have provided it for him.  
12 Q. That were in Walco's bid?  
13 A. Their proposal, yes.  
14 Q. And when you are on the phone with him for  
15 these 27 and a half minutes do you say, okay, at page 2  
16 of the bid they have a price of \$87,000 a month. Did  
17 that come out?  
18 A. On page 2? I doubt very much.  
19 Q. Let me just ask this, without reference to  
20 the pages. Did you tell him, for example, they bid  
21 \$87,000 a month?  
22 A. I'm sure that I would have absolutely told  
23 him the prices. What other details --  
24 Q. Did you point out they have a yearly cost of  
25 living increase of 5 percent per year?

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1 Q. Did you ask him why he didn't submit a letter  
2 from the bank?  
3 A. I doubt it.  
4 Q. Did you tell him that they gave him the  
5 business references?  
6 A. I doubt it.  
7 Q. Did you tell him that they put in their bid  
8 information about the management capability?  
9 A. Doubt it.  
10 Q. But you did tell him price?  
11 A. I'm pretty sure that I would have.  
12 Q. You told him the price even though we sent  
13 you a letter on June 7th that said please don't  
14 disclose our proprietary information, correct?  
15 MR. STROMBERG: Objection, argumentative. It  
16 calls for a legal conclusion. You can answer.  
17 A. Proprietary information -- I don't know of  
18 any proprietary information.  
19 Q. (By Mr. Charney) Well, we'll get there, but  
20 you knew that we asked for that to remain confidential?  
21 A. Proprietary information.  
22 Q. Yes. Before, without asking what was said,  
23 before you called Simmons twice and then talked to him  
24 again for almost 30 minutes, did you talk to your  
25 County lawyer about it?

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1 opening up their ravines and saying dump your crap  
2 here?  
3 A. Nope.  
4 Q. You are not aware of that?  
5 A. Nope.  
6 Q. And you haven't seen the photos?  
7 A. Huh? I don't have them.  
8 Q. I asked if you saw them.  
9 A. I saw them, yeah.  
10 Q. Does that look like some fresh refuge there?  
11 I mean, there were green trees dumped there, weren't  
12 there?  
13 A. There is a pile of some brush.  
14 Q. And there was some pine trees with some green  
15 needles, you don't recall that?  
16 A. Yes, but where they were and --  
17 Q. Assuming that's in Idaho County, is that a  
18 legal or illegal dumpsite?  
19 MR. STROMBERG: Objection, calls for speculation.  
20 Calls for a legal conclusion. Over the objection you  
21 can answer.  
22 A. I did not look that close. It could have  
23 been slash piles.  
24 Q. (By Mr. Charney) Okay. Nevertheless, we know  
25 that we have to add that number, which is probably now

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A. No, I did not.  
2 Q. (By Mr. Charney) Why not?  
3 A. Because I hadn't crunched that number yet.  
4 Q. Okay. Did you crunch his fuel surcharge  
5 number before concluding that he was the lowest  
6 apparent bidder?  
7 A. At what time?  
8 Q. Any time before you said he was the lowest  
9 apparent bidder.  
10 A. On the date that we opened the contracts, no.  
11 Q. How about the next day?  
12 A. I'm not sure when I crunched those numbers.  
13 Again, if I had -- at some point in time during the  
14 discussion in open meeting I crunched a lot of numbers.  
15 Q. Did you ever explain or go to Walco and say,  
16 look, Simmons put in a bid. Everybody knew it. He  
17 doesn't have a transfer station in Idaho County --  
18 A. Wasn't an issue.  
19 Q. Okay. Let me finish my question.  
20 MR. STROMBERG: Yeah, we have to let him finish.  
21 Q. (By Mr. Charney) Did you call Marietta or  
22 Patrick and say, look, we have allowed an exception to  
23 this contract for Mr. Simmons. That exception being we  
24 are not going to require this transfer station to be  
25 located in Idaho County. In all fairness we would like

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1 vanished off your calculator, to the 77,202 based on  
2 numbers that you researched, correct?  
3 MR. STROMBERG: Objection, ambiguous question.  
4 You can answer over the objection.  
5 A. Prior to Simmons agreeing to that higher  
6 amount.  
7 Q. (By Mr. Charney) Prior to, if you are just  
8 looking at his bid --  
9 A. Yeah.  
10 Q. -- you know that you've got some more money  
11 that you got to add?  
12 A. Well, looking at that bid, I don't know when  
13 I crunched the numbers.  
14 Q. Okay, but you guys were all quick to say he  
15 is the lowest apparent bidder, though, weren't you?  
16 MR. STROMBERG: Objection, argumentative  
17 question. Quick is an argumentative word and ambiguous  
18 in this context. Over that objection he can answer.  
19 Q. (By Mr. Charney) Did you run that number  
20 before you jumped to the conclusion that he was the  
21 lowest apparent bidder?  
22 MR. STROMBERG: Objection, argumentative  
23 question. Ambiguous question, jumped to conclusion is  
24 to the defending phrase. Over the objection you can  
25 answer.

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1 you to bid this contract excluding that from the  
2 equation. Did you ever make that call or invite a new  
3 bid with the exclusion of the transfer station  
4 requirement?  
5 MR. STROMBERG: And I'll have to state my  
6 objection. The question is argumentative. It is  
7 compound. It assumes facts not in evidence. It asks  
8 you to draw legal conclusions, but over all those  
9 objections you can answer the question.  
10 A. No.  
11 Q. (By Mr. Charney) Why not?  
12 A. It wasn't an issue.  
13 Q. How is it not an issue?  
14 A. Both could provide a transfer station.  
15 Q. And the transfer station was much more  
16 convenient -- the Walco transfer station was much more  
17 convenient for those in the service area to be covered  
18 than was Simmons, correct?  
19 MR. STROMBERG: Objection, asked and answered.  
20 You can answer it again.  
21 A. Not to a substantial amount.  
22 Q. (By Mr. Charney) A 70-mile round-trip is not  
23 substantial to you?  
24 A. 70 miles for other people on the other side  
25 of the County.

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**EXHIBIT C**  
**James Chmelik Deposition**

1 IN THE SECOND JUDICIAL DISTRICT,  
2 SITTING WITHIN AND FOR IDAHO COUNTY,  
3 STATE OF IDAHO

5 WALCO, INC., an Idaho Corporation,  
Plaintiff,  
6 vs.  
7 COUNTY OF IDAHO, a political  
8 subdivision of the State of Idaho,  
9 and SIMMONS SANITATION SERVICE,  
10 INC., an Idaho Corporation,  
11 Defendants.

12  
13 TRANSCRIPT OF THE DEPOSITION OF JAMES CHMELIK  
14 HAD ON THE 4TH DAY OF NOVEMBER, 2013, AT 4:00 PM

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25 REPORTED BY: KRISTI LYNN EVANS, RPR, CSR NO. 661

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1

BE IT REMEMBERED that the above-entitled matter  
2 came on for deposition at the hour of 4:00 p.m., November  
3 4th, 2013, at the Super 8 Conference Room, City of  
4 Grangeville, County of Idaho, State of Idaho.

5 (Thereupon the following oral proceedings  
6 were had as follows, to-wit:)

7 JAMES CHMELIK

8 after having been first duly sworn,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CHARNEY:

12 Q. Will you please state your name spelling your  
13 last for our Court Reporter.

14 A. Want my full name?

15 Q. Sure.

16 A. James Arthur Chmelik, C-h-m-e-l-i-k.

17 Q. How are you presently employed?

18 A. I'm self-employed, and I'm a County  
19 Commissioner.

20 Q. And in self-employment, you told me once, but  
21 what is it you do?

22 A. I run a little ranch. We grow hay, some  
23 timber, and I also do custom cabinets and millwork.

24 Q. Okay. How long have you been a County  
25 Commissioner?

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3

1 APPEARANCES

2 For the Plaintiffs: MR. DENNIS M. CHARNEY  
3 Charney and Associates  
4 1191 East Iron Drive, Suite 200  
Eagle, ID 83616

5 For the Defendants: MR. DAVID R. RISLEY  
6 Simmons Sanitation Attorney at Law  
7 P.O. Box 1247  
8 Lewiston, Idaho 83501

9 For the Defendants:  
Idaho County

10 MR. BENTLEY G. STROMBERG  
11 MR. JOSHUA D. MEKARCHER  
12 Clements, Brown & McNichols  
321 13th Street  
Lewiston, Idaho 83501

13  
14 Also Present: Mr. Robert Simmons  
15 Mr. Patrick Holman  
16 Ms. Marietta Holman  
17  
18  
19  
20  
21  
22  
23  
24  
25

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2

1 A. You made me think. Almost three years.

2 Q. Were you initially appointed and then elected  
3 or did you just decide to run?

4 A. I was elected. I ran.

5 Q. Contested or uncontested?

6 A. It was a contested race.

7 Q. Primary and general or just in the primary?

8 A. Just the general.

9 Q. Okay. Do you recall approximately in January  
10 of 2012 or thereabouts when the County Commissioners  
11 began to discuss the need to renew the solid waste  
12 contracts?

13 A. I don't know the exact date. I know we were  
14 looking at -- we knew it was coming up.

15 Q. Okay. Do you recall having a series of  
16 meetings with both Mr. Simmons, as well as  
17 representatives of Walco, to discuss continuing these  
18 contracts?

19 A. I would have to look at the minutes of the  
20 Commissioners' meetings.

21 Q. Do you remember if there were -- I'm not  
22 asking you for an exact date, but in general do you  
23 recall there were meetings?

24 A. There were meetings in the Commissioners'  
25 room to discuss this, yes.

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1 MR. STROMBERG: Objection, ambiguity. You can  
2 answer.  
3 A. I just took it that Walco has a decision to  
4 make, and I'll accept that decision.  
5 Q. (By Mr. Charney) Okay. Did you personally  
6 take any steps to protect any proprietary information  
7 held by the County at that time or given to the County  
8 after this?  
9 MR. STROMBERG: I have to object based on the  
10 ambiguity of the word proprietary and based on the fact  
11 that it assumes the County had any proprietary  
12 information regarding Walco, but over those objections  
13 you can answer.  
14 A. I wasn't aware of any proprietary information  
15 that the County had.  
16 Q. (By Mr. Charney) So if you weren't aware of  
17 any then you took no steps to protect it?  
18 A. It is all public record.  
19 Q. Okay. Did you ever ask anybody what  
20 information may or may not be proprietary?  
21 MR. STROMBERG: If you can disclose without  
22 disclosing communications to your attorney. Everything  
23 else is fair game but not communications with your  
24 attorney.  
25 A. Restate the question because I am not --

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1 Q. (By Mr. Charney) Did you ever undertake to  
2 research for your own information what is and what is  
3 not proprietary information?  
4 A. No.  
5 Q. Okay. Let's go ahead and be done with No. 1.  
6 Pull up Exhibit No. 3, please. Do you recognize  
7 Exhibit 3?  
8 A. It looks like the RFP proposal that Simmons  
9 gave us.  
10 Q. What do you mean by an RFP proposal?  
11 A. Request for proposal.  
12 Q. Did he submit that to you in response to a  
13 document that you published in the paper entitled Solid  
14 Waste Management System Proposal Specifications?  
15 A. I'm sure we did.  
16 Q. Prior to Mr. Simmons submitting that document  
17 to the County did you have any conversations with him  
18 about submitting a bid?  
19 A. As far as submitting a bid, other than he  
20 called me up and asked where -- when he was reviewing  
21 what the sites were he found a couple dumpster  
22 locations that weren't on the list that he had, and he  
23 wondered if they were there. And I said, yeah, those  
24 dumpster sites are there. That was it.  
25 Q. Any information about price or location or

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- anything like that?  
2 A. Just the location of those dumpsters he asked  
3 me about.  
4 Q. Okay. Let's take a look at, I believe,  
5 Exhibit No. 2. Is that right on top there? What is  
6 Exhibit No. 2?  
7 A. It is Solid Waste Management System Proposal  
8 Specifications.  
9 Q. How many pages are there total? It should be  
10 numbered in the bottom right.  
11 A. If the numbering is correct there is 20.  
12 Q. Twenty?  
13 A. If the numbering -- I'll count them if you  
14 want me to.  
15 Q. Oh, okay. You are right. Sorry. Yes, there  
16 is 20 there. Will you please tell me what input you  
17 had in preparing that document?  
18 A. We had our attorney prepare this document.  
19 Q. So your input would be nothing?  
20 A. I am going to trust my Counsel to do their  
21 job to put the specifications in for a proposal, and I  
22 did.  
23 Q. I understand, but as a County Commissioner  
24 there was certainly some specifications that you would  
25 have been interested in, correct?

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1 A. I was interested in getting the best proposal  
2 I could for the people of Idaho County, and I trusted  
3 my Counsel to put it together. I did review it and  
4 thought it was a fine proposal but as far as sitting  
5 down, actual input, no.  
6 Q. Okay. So, you reviewed it before it was  
7 published?  
8 A. Uh-huh (affirmative).  
9 Q. You have to say yes or no.  
10 A. Yes.  
11 Q. Okay, and what types of things did you review  
12 to make sure were either there or not there?  
13 A. My judgment.  
14 Q. What?  
15 A. My own personal judgment. I mean, I reviewed  
16 it based on what I thought a proposal should be. If I  
17 had any questions I would have raised them, and I did  
18 review it. I read the whole thing.  
19 Q. In your mind out of all of the various  
20 matters that are set forth in here for the people  
21 bidding to respond to, what was the most important in  
22 your mind?  
23 MR. STROMBERG: I need to clarify. The word bid  
24 and request for proposal, same agreement as in the  
25 prior depositions.

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1 A. Do you want to go to compensation?  
2 Q. Yeah. Let's go to section 6, compensation.  
3 Any changes that were of concern?  
4 A. Okay. Not of concern, just that they had  
5 proposed a different number than what we asked for.  
6 Q. They proposed 87, and you proposed just under  
7 61?  
8 A. Uh-huh (affirmative.)  
9 Q. All right. Other than that in the  
10 compensation section were there concerns, compensation  
11 section No. 6?  
12 A. No.  
13 Q. Okay. Let's move to section 7, annual  
14 compensation adjustments. This was an area where Walco  
15 made a change, correct?  
16 A. Yes.  
17 Q. You proposed something tied to the CPI?  
18 A. Yes.  
19 Q. And Walco said how about five percent annual  
20 adjustment?  
21 A. Yes.  
22 Q. Didn't strike you as a sticking point at that  
23 point, did it?  
24 A. No.  
25 Q. Okay. Anything else in section 7 of concern?

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1 A. No.  
2 Q. All right. Section 8, were there any changes  
3 of any concern there?  
4 A. No.  
5 Q. Section 9, the insurance provision, did they  
6 give you, I guess, your dream?  
7 A. You like that word, don't you. My kids like  
8 that word, too. I would say, no.  
9 Q. Okay. Indemnification, did they make any  
10 changes that were of concern?  
11 A. Section 10, right?  
12 Q. Yes. No, no, I'm sorry -- yeah, section 10,  
13 indemnification. Any concerns there?  
14 A. No.  
15 Q. Section 11, control of waste stream. I know  
16 it is getting late, but that was the issue where you  
17 put in the recycling issues and Walco took that out?  
18 A. No.  
19 Q. That did not concern you?  
20 A. No.  
21 Q. Okay, and the rest of it is kind of  
22 boilerplate, but anything else in the balance of the  
23 contract, the written portion here, that was of any  
24 concern?  
25 A. No.

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1 Q. All right, then. Finally with respect to, I  
2 guess, the spreadsheet portion with respect to  
3 locations, size and number and containers and pickup  
4 days, Walco agreed 100 percent what the County  
5 requested for on that, correct?  
6 A. Provided if these two pieces match up, yes.  
7 Q. Okay. So, with respect to what Simmons  
8 proposed on the same day and time, why did you  
9 determine that his was a superior bid?  
10 MR. STROMBERG: At what point in time? The  
11 question is ambiguous.  
12 Q. (By Mr. Charney) At some point you determined  
13 that Simmons had a superior bid, correct?  
14 A. I used the request for proposal that we had  
15 asked everybody to submit their proposals on, and I  
16 based on what they were proposing and what they were  
17 proposing here.  
18 Q. Simmons was the winner?  
19 A. Simmons, based on how I based my decision,  
20 yes.  
21 Q. My question is: What did you base your  
22 decision on?  
23 A. Well, I based my decision on that I thought  
24 they had a lower price.  
25 Q. Okay. So price was the issue for you, then?

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1 A. It was one of them.  
2 Q. Okay. You've said numbers. You've said  
3 price. In the transcript you said lowest bidder -- let  
4 me doublecheck -- current low bidder. So, price was  
5 key in your mind, correct?  
6 A. Price was an issue in my mind.  
7 Q. Would that, then, not make Walco's number  
8 with respect to price important to them?  
9 MR. STROMBERG: Objection. It calls for  
10 speculation.  
11 A. Important to who?  
12 Q. (By Mr. Charney) Well, important to both of  
13 them, actually.  
14 A. I don't understand what you are saying.  
15 Q. (By Mr. Charney) Don't you, or do you  
16 understand and you just don't want to?  
17 A. No, I don't understand what you are saying.  
18 MR. STROMBERG: Objection, argumentative, and a  
19 little bit funny.  
20 Q. (By Mr. Charney) You say that you do  
21 competitive bids for tree cutting on your property,  
22 correct?  
23 A. Uh-huh (affirmative.)  
24 Q. Is that yes?  
25 A. Yes.

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**EXHIBIT D**  
**Idaho County Commissioner Meeting**  
**10/15/2012**

1           BE IT REMEMBERED that the above-entitled matter  
2 came on for hearing before the Idaho County Commissioners,  
3 in the Commissioners' Board Room at the Idaho County Courthouse,  
4 City of Grangeville, County of Idaho, State of Idaho.

5           (Thereupon the following oral proceedings  
6           were had as follows, to-wit:)

7           COMMISSIONER BRANDT: I've got 3:00 so let's get  
8 going on the pledge.

9           (Pledge of Allegiance.)

10          COMMISSIONER BRANDT: All right. This is a good  
11 meeting. We have one subject. Okay, the first one was  
12 Simmons Sanitation, and they have -- well, they've got  
13 a base price of 77,202 per month (inaudible) some  
14 detail -- vague detail. And then we have Walco  
15 (inaudible) letter, and they have a base price of  
16 87,000, and a lot more detail. So, Madam Clerk. Are  
17 you doing the Idaho County Light and Power thing?

18          UNKNOWN PERSON: (Inaudible).

19          COMMISSIONER BRANDT: (Inaudible).

20          UNKNOWN PERSON: (Inaudible).

21          COMMISSIONER BRANDT: Pardon?

22          UNKNOWN PERSON: (Inaudible).

23          COMMISSIONER BRANDT: (Inaudible).

24          UNKNOWN PERSON: (Inaudible).

25          COMMISSIONER BRANDT: (Inaudible).

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1 that we were covered (inaudible.)

2 COMMISSIONER BRANDT: Okay. Well, Commissioners,  
3 you've got (inaudible). Tomorrow at 2:30 we have time  
4 scheduled for this.

5 COMMISSIONER CHMELIK: (Inaudible).

6 COMMISSIONER ROCKWELL: Not really, though. What  
7 we said was we were using the contract with the  
8 surcharge.

9 COMMISSIONER CHMELIK: Right.

10 COMMISSIONER ROCKWELL: So if you don't use that  
11 contract it's basically non-responsive. We can run the  
12 numbers and we should (inaudible) and it has a  
13 surcharge.

14 MS. HOLMAN: (Inaudible) it has a lot of things  
15 in your contract that (inaudible). It wasn't stated in  
16 your coversheet (inaudible) whatever. So you had to  
17 kind of bid it off of (inaudible) we work with you guys  
18 and knew kind of what the gist was but (inaudible) area  
19 and what we're looking at and just, you know, comparing  
20 to Robert and what he did in his area and how it went  
21 down, and (inaudible) price per ton and just the gist  
22 of (inaudible) look at it. You take Robert's tonnage  
23 divided by what he's getting at 215 a ton. We're  
24 getting 160 when you take what we get paid. So, you  
25 know, a lot of things --

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# **EXHIBIT E**

**Idaho County Commissioner Meeting  
10/16/2012**



1 MR. HOLMAN: Yeah.

2 COMMISSIONER BRANDT: Okay. Anything else?

3 (Inaudible)? All right.

4 MR. HOLMAN: (Inaudible) happens as far as  
5 contract we do like to say we do appreciate the work  
6 we've got to do with you over the years (inaudible.)

7 COMMISSIONER BRANDT: Thank you, Patrick. Thank  
8 you, Marietta.

9 (End of first recorded segment.)

10 COMMISSIONER ROCKWELL: I have a couple of  
11 questions. The transfer station I guess this could be  
12 a question to you, Robert. Because you don't have a  
13 transfer station up here and Walco does just in the  
14 grand scheme of things how do you propose or suggest  
15 you're going to take care of the county citizens who  
16 are used to dumping at the transfer station?

17 MR. SIMMONS: This proposal we did was literally  
18 doing the route themselves, not putting up any other  
19 roll offs at this time to take care of that. I don't  
20 know how many people are driving from Cottonwood all  
21 the way over here to use their transfer station or from  
22 Riggins or from Elk City.

23 COMMISSIONER ROCKWELL: (Inaudible).

24 MR. SIMMONS: So until something was figured out  
25 in that area for the longterm Grangeville area would be

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1 When we came in to talk with you you said we had to put  
2 sites out and run roll offs, which is an extra trip  
3 with a roll off truck. If we don't run a roll off down  
4 there there has to be the exact same amount of service  
5 from down there because you are not going to have  
6 anyone from the Salmon River come all the way up to  
7 Grangeville to use our transfer station. So we had to  
8 leave all the routes the same because we have no way of  
9 possibly dropping routes, especially with one right in  
10 Riggins now.

11 MS. HOLMAN: And we have one more question. Does  
12 the 77,000 cover -- what is the fuel price of the 77?

13 UNKNOWN PERSON: 259 right in the contract that  
14 was (inaudible) proposal.

15 MS. HOLMAN: Okay. Now if we go and add the fuel  
16 surcharge with -- and he's also going to be traveling  
17 an extra 70 miles per truck up to this area because  
18 he's got to go back to Kamiah. When I figured it out  
19 it's an extra \$7,791 for your fuel that you will be  
20 tacked on as soon as you sign on January if it's at  
21 \$4.30. So now if we add 7,000 onto the 77 or 84 plus  
22 the extra tonnage you're at 87,000, same as ours.

23 MR. HOLMAN: Our bids were almost --

24 COMMISSIONER ROCKWELL: Robert, what do you think  
25 of that?

1           MR. SIMMONS: I did not do the extra mileage  
2 on -- for that. But we were actually pretty close in  
3 the -- I think it was (inaudible) figured the five --  
4 about 79. But that is where the fuel surcharge is.  
5 That's where it's at. The biggest thing I look at on  
6 our bid was we were not going to stay the same very  
7 long. It would be our job to literally come in and  
8 find the savings to consolidate the sites, build many  
9 drop-off sites or whatever it took to get this to where  
10 it should have been. I'm not saying anything bad about  
11 Walco, also us is even our sites right now that we've  
12 built right now we are still 10 years behind where  
13 everybody else is on what everybody else is doing to  
14 manage their solid waste. So we need to move quickly  
15 to get this done, whether it would be us or Walco, to  
16 get Idaho County where it needs to be. Other than that  
17 you're going to see a constant increase in everything.  
18 We have a gigantic antiquated system that even with our  
19 consolidated sites in Kooskia and Harpster and upriver  
20 and Big Butte, School House and all of that. It's  
21 still an antiquated system. We still need -- I'm going  
22 to be looking at a drop-off system in Kooskia that will  
23 be there all the time. That's one thing we're looking  
24 at. That will save me route time on our other  
25 dumpsters which, in turn, will pay for that site. So

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1 like do ours off of, and to have it be almost undersold  
2 because, oh, we're going to, you know, advance we're  
3 going to put drop-off boxes and stuff like that.  
4 That's hard for us to say. We wanted you to put it in  
5 writing what you wanted, how you wanted it, and we  
6 would bid it that way.

7 COMMISSIONER ROCKWELL: Robert bid it that way,  
8 and you bid it that way.

9 MS. HOLMAN: Yes, but there's a lot of --

10 COMMISSIONER ROCKWELL: I look at Robert's bid,  
11 and I think he's bidding it the way we asked him to.  
12 Same with you, Marietta. I don't think -- he can talk  
13 about expansion and efficiencies, that's his business,  
14 but our business is to create a county-wide collection  
15 system, which we asked you to bid. You bid. We asked  
16 Robert to bid, and he did. (Inaudible.) So it's  
17 apples and apples there when I'm looking at the  
18 numbers. That's -- you keep saying this is all  
19 contingent upon efficiency. He's saying (inaudible.)

20 MS. HOLMAN: I guess we just wanted to make sure  
21 (inaudible) one way or another (inaudible) antiquated  
22 system (inaudible).

23 MR. HOLMAN: When she says the dumpster system  
24 works the best, she's not saying the dumpster system  
25 everywhere it is. She's saying, yes, consolidation get

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1 us your number is 82,000 I'm going to take that number.  
2 Robert tells us his number is whatever it is  
3 (inaudible) take that number. Again, I don't want to  
4 throw anything in here that's extra.

5 MR. HOLMAN: Well, but it is.

6 COMMISSIONER ROCKWELL: You shouldn't be talking  
7 for him, though, or vice-versa I think relative to  
8 numbers. If he tells us his number I'm got to count on  
9 that, and that's the check we're going to write.

10 MR. HOLMAN: Well, we have to because you are  
11 comparing two different bids right now. He bid his one  
12 way, and we bid ours another. And they came to the  
13 same number essentially.

14 COMMISSIONER ROCKWELL: Just as a for instance we  
15 asked you to bid a specific contract and specific ideas  
16 in that contract, and you chose not to --

17 MR. HOLMAN: And we did.

18 COMMISSIONER ROCKWELL: -- so how do we do that?

19 MS. HOLMAN: How did -- Robert just quoted the  
20 transportation (inaudible).

21 MR. SIMMONS: The total I bid actually states  
22 that we were using the (inaudible) transfer station.  
23 The proposal we put together literally states that what  
24 is going in the dumpsters right now that we figured at  
25 that tonnage rate we will take care of it up to that

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1 (inaudible) he's saying on fuel surcharges there's  
2 gallons that you should have in there. This is a  
3 number you guys need to know to compare these. We gave  
4 you a complete bid with everything answered. His is  
5 gray. I would like to know how many gallons he has in  
6 there to use. We have his numbers figured out. We  
7 have his whole contract figured out because we  
8 requested it. We have everything and know what it's  
9 going to cost.

10 COMMISSIONER ROCKWELL: Patrick, I wish you would  
11 have bid as we requested because --

12 MR. HOLMAN: How did we not?

13 COMMISSIONER ROCKWELL: You say a five percent.  
14 His is what we had in the contract (inaudible) which  
15 was a surcharge (inaudible.)

16 MS. HOLMAN: (Inaudible.)

17 COMMISSIONER ROCKWELL: (Inaudible) what we  
18 asked.

19 MS. HOLMAN: (Inaudible).

20 COMMISSIONER ROCKWELL: (Inaudible).

21 MR. HOLMAN: He didn't.

22 MS. HOLMAN: If you're going to do it it's the  
23 same. He didn't bid it according to this.

24 MR. HOLMAN: Well, if we bid what you ask the  
25 contract here says you'll take it for \$60,000 a month.

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1 basically the same price (inaudible) extras and  
2 (inaudible).

3 COMMISSIONER ROCKWELL: So I don't have any other  
4 questions, Skip. I had one thought that maybe we enter  
5 into negotiations with the current low price bid and if  
6 that is unsuccessful we move onto the second low  
7 bidder. I don't know how we're going to do this but --  
8 (Inaudible) low bidder is (inaudible) Walco says it's  
9 (inaudible) Simmons is the low bidder. There are soft  
10 costs that are brought back into the Simmons' contract  
11 which may alter that. Walco believes both numbers are  
12 similar. Simmons believes his is less expensive by  
13 5,000 bucks (inaudible).

14 MR. MACGREGOR: I couldn't remember when we put  
15 it out for bid did we set a deadline after the bids  
16 came in?

17 COMMISSIONER ROCKWELL: (Inaudible).

18 MR. MACGREGOR: I don't have that in front of me.  
19 You may want to consider -- I mean, just look at this  
20 and consider what Walco is saying and make sure.

21 COMMISSIONER ROCKWELL: I'm saying I think it's  
22 necessary not to award (inaudible) enter into  
23 discussions with the current low bidder, and then find  
24 out some (inaudible) if it is true of the two  
25 numbers -- after talking with Robert the two numbers

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1 are identical then we have a different animal.

2 MR. MACGREGOR: Right. I agree.

3 MR. HOLMAN: It doesn't really matter. He's got  
4 the advantage now. He knows our numbers. So, I mean,  
5 you might as well just award it to him. If I were  
6 Robert I would take it.

7 MR. SIMMONS: You can fit that in there that I  
8 would have to come into executive session and show you  
9 the numbers for -- if that's the number that is really  
10 sticking (inaudible.)

11 MS. HOLMAN: (Inaudible.)

12 MR. SIMMONS: We're not talking about  
13 consolidated sites at the moment. We're talking about  
14 the original bid. If that's the bid price for fuel  
15 surcharge at this point in time. I don't have a  
16 problem showing you those numbers in executive session  
17 for proprietary reasons.

18 COMMISSIONER ROCKWELL: I don't know, what do you  
19 think, Skip?

20 COMMISSIONER CHMELIK: I would be really  
21 interested to know (inaudible). Without that number  
22 it's not on this bid (inaudible).

23 MS. HOLMAN: Consider the tonnage cap and the  
24 transfer station. So if the transfer station is  
25 anywhere from five to 10,000 for us to run it

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1 it in executive session for Simmons. Is there any  
2 reason you folks would want to come in for executive  
3 session?

4 MS. HOLMAN: (Inaudible) bid process (inaudible).

5 COMMISSIONER BRANDT: We have to come out to  
6 really have discussions that are not proprietary.

7 MS. HOLMAN: Well, the fuel (inaudible) ours are  
8 --

9 MR. HOLMAN: As a proprietary if it's a bid he  
10 doesn't have yet. It's a bid. It's not his current  
11 numbers.

12 MS. HOLMAN: If you're facing.

13 MR. SIMMONS: It's still my current numbers on  
14 how I operate.

15 MR. HOLMAN: How much fuel (inaudible.)

16 MS. HOLMAN: Wait, it will be public knowledge if  
17 (inaudible.)

18 COMMISSIONER BRANDT: Address it to the attorney.

19 MS. HOLMAN: It's going to be public if he has to  
20 (inaudible.)

21 MR. SIMMONS: I have to turn the total in not how  
22 I came up with those numbers.

23 MR. HOLMAN: Isn't that what they're asking for  
24 is a total?

25 MR. SIMMONS: Yeah. They want to see how I came

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**EXHIBIT F**  
**Idaho County Commissioner Meeting**  
**10/23/2012**

1 COMMISSIONER BRANDT: It was done before I got on  
2 in 2007.

3 MR. MACGREGOR: Really?

4 COMMISSIONER BRANDT: Yeah. Okay we're  
5 adjourned.

6 (End of second recorded segment.)

7 COMMISSIONER BRANDT: Okay, Commissioners, we're  
8 back to talking trash, and where we left it is Simmons  
9 was going to visit about -- with us about -- Mr.  
10 Simmons was going to visit about the additional cost  
11 and fuel-age, tonnage, or anything that he would like  
12 to share. We've opted not to go into executive session  
13 so it's whatever you want to give us in opening.

14 MR. SIMMONS: That's fine. I feel that -- just  
15 like our fuel surcharge, but I put it to the month.  
16 Okay, what I did was I figured out a monthly total for  
17 MSW of what we're averaging 4500 tons a year is what we  
18 figured in our proposal. Took it straight off of what  
19 we do on our regular fuel surcharge 27 tons per load,  
20 and then our long-haul gallons are 80 gallons per load  
21 that's what KBC figures in their loads. And then total  
22 gallons a week for the collection and total per month  
23 for collection. Today's fuel price is 4.259. I didn't  
24 do an average because I just -- today's fuel price is  
25 4.259. Our starting price is 259. You can see the

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1 should have had it last Monday or Tuesday whenever you  
2 guys opened this up like that. So it's just a clear --  
3 to us just this isn't a fair bid process.

4 COMMISSIONER BRANDT: Well, throwing your numbers  
5 at Robert's I get just under \$86,000.

6 MS. HOLMAN: Well, you can't because we start in  
7 a different area. That's why (inaudible) 1820 gallons  
8 (inaudible) he's coming from Kamiah (inaudible.)

9 COMMISSIONER BRANDT: That's your number is 7900  
10 that's adding your (inaudible.)

11 MS. HOLMAN: No, he said 7900 on Monday -- or  
12 Tuesday (inaudible) that wasn't my (inaudible.)

13 MR. SIMMONS: No, I didn't say 79.

14 MS. HOLMAN: Yes.

15 MR. SIMMONS: I said I did not know.

16 MS. HOLMAN: (Inaudible).

17 MR. SIMMONS: I did not know. I said that I  
18 would come back.

19 UNKNOWN PERSON: It doesn't matter.

20 COMMISSIONER BRANDT: But when I called you --

21 MS. HOLMAN: Yes.

22 COMMISSIONER BRANDT: -- your input on this you  
23 told me 7900.

24 MS. HOLMAN: I said that's what Robert said. I  
25 told you (inaudible).

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1 would be with us so it's --

2 MR. MACGREGOR: But that wasn't my understanding  
3 of having Robert come back today. My understanding was  
4 we hadn't decided who to pick. We wanted more  
5 information from him, which we have a right to do. I  
6 mean, that's what this is all about.

7 MS. HOLMAN: (Inaudible) past the point of  
8 (inaudible).

9 MR. MACGREGOR: I mean, I disagree.

10 MR. HOLMAN: So can we just tell you right now  
11 our bid is \$65,000, and there's a bunch of things in  
12 there that we can talk about at negotiations because  
13 that would put us in negotiations first. Ours was  
14 specific.

15 MR. MACGREGOR: I think you can. I think if you  
16 want to say that we can sit here and negotiate with  
17 whoever we want. Yeah, you can say that.

18 MR. HOLMAN: That sounds fair. Would that be  
19 fair to Robert?

20 COMMISSIONER ROCKWELL: (Inaudible) I think we  
21 should be in negotiations with the apparent low bidder.  
22 It's what we're supposed to do, and if it turns out  
23 (inaudible) negotiations and discussion it turns out  
24 he's not the low bidder, okay, then we have the right  
25 to go to the next bid who (inaudible).

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1 MR. MACGREGOR: We weren't sure if he was low was  
2 my understanding that's why we wanted to come back  
3 today. You guys were saying he was not the low, and we  
4 were listening to you.

5 MR. HOLMAN: That was after he wanted to go into  
6 negotiations with apparent low bidder. He made the  
7 motion twice.

8 COMMISSIONER ROCKWELL: I said apparent twice.

9 MR. HOLMAN: And went and raised the motion, and  
10 then after that you said (inaudible.)

11 MS. HOLMAN: It came back (inaudible) we were  
12 told that ours was incomplete, and we were trying to  
13 actually respect the bid process because (inaudible)  
14 for a living, and Dennis and everybody told us it's not  
15 fair for us to, you know, bargain with you with  
16 somebody else here because it's not fair (inaudible.)  
17 That came down to, okay, if there was clarifications  
18 that needed to be asked then we found them out, and it  
19 became that, okay, you know, for one as far as when it  
20 came down to the criteria you said you were basing it  
21 off of it seems like that's not what you guys  
22 technically are basing it off of. If it was then ours  
23 should have stood out from negotiations (inaudible)  
24 whether low or high on paper just a base price because  
25 it said cost of services.

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1 not bound -- this was a guideline. We're not bound to  
2 follow that word-for-word.

3 MS. HOLMAN: That's in the (inaudible) evaluation  
4 criteria set up (inaudible). So it can't be may in one  
5 part and may -- or, you know, in the second part. A  
6 says that's how you would do it when you open them if  
7 you want to open them and ask for more information.  
8 When you go to how you're evaluating them and you say  
9 that you will be basing them off of these four  
10 categories, then I'm not going to think the (inaudible)  
11 may fall down into section B. They're two separate  
12 sections.

13 MR. MACGREGOR: Well, one of the evaluation  
14 criteria is the cost, I mean, (inaudible.)

15 MS. HOLMAN: (Inaudible) specifically for the  
16 modified and unmodified system.

17 MR. MACGREGOR: But I'm assuming you would agree  
18 that was the most important factor of the bid was the  
19 cost.

20 MS. HOLMAN: But for -- it asked for modified and  
21 unmodified systems. You only received an unmodified  
22 system from Simmons Sanitation. Again, omissions  
23 being -- or, you know, lacking -- his is lacking. Ours  
24 is in completeness and everything there. Might not be  
25 the number you want or were looking at first, but when

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1 it came to what you said you were going to base it off  
2 of and how you were going to look at it --

3 MR. HOLMAN: Everything is answered.

4 MS. HOLMAN: -- everything is answered.

5 COMMISSIONER ROCKWELL: The five percent,  
6 Marietta, over a 10 year period is an increase up to  
7 \$141,000 in 10 year contract. That would be your base,  
8 the 141,000. So we moved from 87,000 to 141,000 on a  
9 five percent required increase. That for me looking at  
10 the numbers is a very tough number to get over. It's  
11 60,000 more than what we're looking at today.

12 MS. HOLMAN: That was the proposal. When you're  
13 looking at proposals it's (inaudible) you're looking at  
14 the one that doesn't have as much information  
15 (inaudible) that one is better.

16 COMMISSIONER ROCKWELL: I'm just asking the  
17 number. It's a \$75,000 increase.

18 MS. HOLMAN: Yes, and it's negotiable. Contract  
19 negotiations (inaudible) contract negotiations  
20 (inaudible.)

21 COMMISSIONER ROCKWELL: 54,000.

22 MR. HOLMAN: We tried to package something that  
23 gave you an exact number you'd be paying. Obviously  
24 either of us go into negotiation that's something that  
25 we're probably going to hammer out. Maybe you guys

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CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he  
correctly and accurately transcribed and typed the foregoing  
transcript from the TAPE RECORDING of the meeting which  
was RECORDED in the above-entitled action or proceeding.

Dated this 11th day of August, 2013.

  
Keith M. Evans, RPR, CSR NO. 655  
Court Reporter

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CLERK OF COURT

1 figure out.

2 MR. MACGREGOR: I mean, James -- Mr. Rockwell is  
3 saying apparent. Again, we don't know who the low  
4 bidder -- last week we didn't know who it was for sure  
5 because you had raised some points. That's what we  
6 were trying to find out. And as far as your bid being  
7 complete, yes, you know, that's very good that you made  
8 a complete bid proposal. You know, you did address a  
9 lot of those things, but that doesn't mean we have to  
10 pick it just because it's the more complete bid. I  
11 mean --

12 MS. HOLMAN: (Inaudible) set up a criteria and  
13 say that you're going to base it off and then deviate  
14 from that, then you're discriminating against one and  
15 not the other.

16 MR. MACGREGOR: But if you have a --

17 MR. HOLMAN: Let me ask this (inaudible) pick us.

18 MR. MACGREGOR: If your price is 200,000, and  
19 it's the complete bid, and his is 77, why wouldn't we  
20 go with --

21 MR. HOLMAN: That's not the case.

22 MR. MACGREGOR: No, but I'm saying -- she says we  
23 should pick her -- pick you guys because it's a more  
24 complete bid. I don't agree with that.

25 MS. HOLMAN: (Inaudible) reasons for us to, you

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1 MR. HOLMAN: Plus you charge Grangeville to use  
2 the dumpsters. There's a fee in there for them.

3 COMMISSIONER ROCKWELL: Yeah, okay, but anyway  
4 you've got a transfer station for Grangeville. And  
5 will that change? Under the contract you have a  
6 contract with the City of Grangeville (inaudible).

7 MR. HOLMAN: That's between us and Grangeville.  
8 I don't what we'll do with that. I have no idea on  
9 that.

10 MS. HOLMAN: I mean, there are a lot of dos and  
11 don'ts (inaudible) so if we're not going to be open,  
12 you know, (inaudible) be open all the time anymore  
13 because (inaudible) call for it. You know, the people  
14 have a right to use county dumpsters. So really kind  
15 of -- depends on what the city people want to do.

16 COMMISSIONER SCHMELIK: Have we hashed this out  
17 enough? Well, I make a motion (inaudible) Simmons.

18 COMMISSIONER ROCKWELL: I second that. The  
19 current low bidder.

20 COMMISSIONER SCHMELIK: The current low bidder.

21 COMMISSIONER BRANDT: Motion has been made and  
22 seconded. Any further discussion? All those in favor  
23 say, aye.

24 (In unison, Aye.)

25 COMMISSIONER BRANDT: Those opposed? Robert,


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CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he  
correctly and accurately transcribed and typed the foregoing  
transcript from the TAPE RECORDING of the hearing which  
was RECORDED in the above-entitled action or proceeding.

Dated this 30th day of October, 2013.

  
Keith M. Evans, RPR, CSR NO. 655  
Court Reporter

KEITH M. EVANS  
NOTARY PUBLIC  
STATE OF IDAHO

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**EXHIBIT G**  
**Charney Letter**

Jan. 7, 2012 3:56PM Law Office

No. 8564 P. 2

**CEARNEY AND ASSOCIATES, PLLC**  
**ATTORNEYS AND COUNSELORS AT LAW**

DEBORAH M. CEARNEY JD, PLLC  
Licensed in Idaho and Oregon

[deborahm@cearney.com](mailto:deborahm@cearney.com)

June 7, 2012

Kurt MacGregor  
Investing Attorney  
416 W. Main St.  
P.O. Box 463  
Gangesville, ID 83530

RE: Waste Collection Contract with Waleco

Dear Mr. MacGregor:

I have had an opportunity to visit with my clients regarding the contract that was proposed several months ago. At this point in time my clients, after reviewing the numbers in more detail, have determined that it is in their best interest to withdraw the offer to contract with the county on the terms set forth in the most recent contract proposed to the Commissioners. It is our view that, given the fact that this contract has not been bid for more than thirty (30) years, that the contract should go out for bid. My clients would like to participate in the bidding process so when the RFP is sent out we would appreciate receiving a copy.

With respect to Waleco's proprietary information, we respectfully request that any proprietary information held by the county be retained by the county and treated as exempt under the Public Records Act. Last year Waleco spent \$10,000.00 to improve the collection sites. Waleco would appreciate reimbursement of these funds at this time.

My clients very much appreciate the dialog that transpired in the earlier part of the year but do believe that it is in the best interest of all involved that the matter be put out for public bid.

As you know, the current contract expires on December 31, 2012. If the county is not able to locate another services provider Waleco will agree to continue providing services on a month to month basis at a price to be agreed upon between Waleco and the county later in the year.

If you have any questions regarding this please feel free to contact me.

Very truly yours,

  
DEBORAH M. CEARNEY

DMC:CH  
cc:clients

1191 E. MONTEAGUE DRIVE, SUITE 200, RACER, IDAHO 83616  
TEL (208) 548-6500 FAX (208) 548-6504

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DEC 16 2013

KATHY M. ACKERMAN  
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ISB No. 1789

Attorney for Defendant Simmons Sanitation Service, Inc.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and SIMMONS  
SANITATION SERVICE, INC., an Idaho  
Corporation,

Defendants.

CASE NO. CV2013-42360

DEFENDANT SIMMONS SANITATION  
SERVICE, INC.'S REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

RISLEY LAW OFFICE, PLLC  
LEWISTON, IDAHO

COMES NOW, Defendant SIMMONS SANITATION SERVICE, INC., an Idaho  
Corporation (hereinafter "Simmons"), by and through its attorney of record, David R. Risley of  
Risley Law Office, PLLC, and submits the following reply memorandum in support of  
Simmons' Motion for Summary Judgment (hereinafter "Simmons' Motion"):

REPLY MEMORANDUM IN SUPPORT OF MSJ—Page 1

n/c/plead/msj—replymemorandum120913—nhh

I.

SIMMONS JOINS IN THE COUNTY'S BRIEFING

Simmons joins in and will not repeat the arguments of Defendant Idaho County, Idaho (hereinafter "Idaho County"), and joins in Idaho County's more extensive response in support of the parties' Motions for Summary Judgment.

II.

PLAINTIFF ADMITS TORTIOUS INTERFERENCE CLAIM IS PRECLUDED

Plaintiff, Walco, Inc., an Idaho Corporation (hereinafter "Walco"), admits its first count of the *Complaint and Demand for Jury Trial* (hereinafter "Complaint") a claim for tortious interference with a business expectancy is 'precluded'. See, Walco's Complaint, pp. 7-9.

Simmons further requests the Court reserve the issue of attorneys' fees for the cost of defending a frivolous claim.

III.

SUMMARY OF ARGUMENT

Simmons concurs with the County that the financial figure publicly proposed by Walco was not legally a trade secret. Simmons also concurs, and incorporates its prior briefing, showing that the process followed by the County here was truly a Request for Proposals antecedent to negotiating a contract rather than a bid to fulfill an existing contract.

Simmons further argues that even if Walco overcomes these defects in its pleadings, Simmons still has no liability to Walco for misappropriation and/or misuse of Walco information because:



1           1.       The Simmons Proposal was submitted October 12, 2013, two days before  
2 even Walco claims that Simmons has knowledge of the Walco proposal.

3           2.       Simmons did not use any of Walco's information, secrets or otherwise as  
4 the Simmons proposal was materially different from the proposal submitted by Walco.  
5 Further, the Simmons proposal was based on Simmons' own operations and calculations  
6 of future expenditures for a system different than had been used in the past.

7           3.       The Simmons proposal was both superior to the Walco proposal  
8 financially and more compliant with County policies, including the important recycling  
9 rebate offered by Simmons and refused by Walco—again, all before Walco made its  
10 proposal public.

11           4.       Simmons only learned of the Walco figures after the public meeting on  
12 October 15, 2012, and well after Simmons prepared its proposal and submitted it on  
13 October 12, 2012.

14           5.       Any information that might previously have been Walco's trade secrets  
15 were made public, without reservation, by Walco at the public meeting of the Idaho  
16 County Commissioners on October 15, 2012

17           6.       Simmons did not, and really could not, have 'wrongfully' acquired  
18 information when it was Walco, who without reservation, made its proposal public and  
19 discussed it publicly on October 15, 2012; A meeting that Simmons did not attend.

20           7.       Simmons did not, and really could not have 'wrongfully' acquired or  
21 misused information when both Simmons and Walco participated in the detailed  
22

1 discussion of all terms of both proposals during the review and clarification process  
2 conducted by Idaho County for review of competing proposals On October 16<sup>th</sup> and  
3 October 23<sup>rd</sup>.  
4

5 8. Walco is estopped from claiming as secret what Walco disclosed publicly  
6 in hopes of winning the Idaho County contract.

7 IV.

8 ARGUMENT

9 A. Basis for Walco Complaints Against Simmons. When asked what the basis for  
10 the claims against Simmons might be, Marietta Holman, a representative of Walco, explained as  
11 follows:  
12

13 1. The RFP was actually a request for bids. *See, the Deposition of Marietta*  
14 *Holman* taken November 5, 2013, p. 39, ll. 1-24, attached as Exhibit G to the  
15 *Supplemental Declaration of Counsel* dated November 15, 2013.

16 2. Simmons' "bid" (using Walco terminology) was defective and Walco's  
17 was complete. Simmons' bid should not, therefore, have been considered by Idaho  
18 County. *See, the Deposition of Marietta Holman* taken November 5, 2013, p. 43, ll. 21-  
19 25 and p. 44, ll. 1-12, attached as Exhibit G to the *Supplemental Declaration of Counsel*  
20 dated November 15, 2013. Walco could not identify any asserted wrongful conduct that  
21 took place before submission of the Simmons' proposal.  
22

23 3. Simmons' wrongful use of Walco secrets arose from the assertion that  
24 Simmons was ".... allowed at the next two meetings [the meetings on the October 16,  
25

1 2012 and October 23, 2012] to continue to change, modify, add, to his proposal or bid,  
2 and that is where he used our number to know exactly where he needed to be....” See,  
3 the *Deposition of Marietta Holman* taken November 5, 2013, p. 35, ll. 20-25 and p. 36, ll.  
4 1-24, attached as Exhibit G to the *Supplemental Declaration of Counsel* dated November  
5 15, 2013.  
6

7 The heart of Walco’s argument is also found at p. 26 of the *Plaintiff’s Response in*  
8 *Opposition to County of Idaho’s and Simmons’ Motions for Summary Judgment*:  
9

10 The Defendants may call the use of Walco’s bid fair  
11 because negotiations in requests for proposals are legal.  
12 But such a characterization does not change the fact that the  
13 County and Simmons both gained Walco’s proprietary bid  
14 information by using a competitive bid proposal, then  
15 failing to abide by competitive bid requirements.

16 *Id.*

17 B. Walco Presented and Argued the Details of Its Proposal and Against the Simmons’  
18 Proposal in Public Hearings of October 15, 16 and 23, 2012.  
19

20 Walco’s assertions do not survive a review of the undisputed facts before the court.

21 1. The public meeting of October 15, 2012:

22 Walco made their proposal known to the public in detail and without reservation  
23 in a public meeting on October 15, 2012. The transcript of the October 15, 2012, meeting  
24 shows that Walco allowed their proposal to be opened and discussed by the  
25 Commissioners; copied; and made part of public record. No one could have reason to  
26 know that the disclosed information was intended to be in confidence.

1 The entire transcript of the October 15<sup>th</sup> meeting is attached as an appendix to this  
2 Memorandum. The tapes of the meeting were included in earlier submission, and allow  
3 the court to review the accuracy of the transcription.

4 Walco attended the opening of the proposals held in public meeting by the Idaho  
5 County Commissioners. Simmons was not in attendance.

6  
7 At no point during this public meeting did Walco mention or assert that any  
8 aspect of the proposal was a secret or proprietary, nor did it make any effort to seek  
9 protection of some purported secret. To the contrary, Walco entered into a public  
10 discussion of the details of their proposal—again, in a meeting open to the public:

11 COMMISSIONER BRANDT: All right. There is a  
12 good meeting. We have one subject. Okay, the first one  
13 was Simmons Sanitation, and they have – well, they’ve got  
14 a base price of 77,202 per month (inaudible) some detail –  
15 vague detail. And then we have Walco (inaudible) letter,  
16 and they have a base price of 87,000, and a lot more detail.  
17 So, Madam Clerk. Are you doing the Idaho County Light  
18 and Power thing?

19 See, the Transcript of the Board of Idaho County Commissioners Meeting, p. 2, ll. 10-17,  
20 attached as Exhibit E of the *Supplemental Declaration of Counsel* dated November 15,  
21 2013, filed herein.

22 Walco also clarified and amended their proposal during this meeting. See, the  
23 Transcript of the Board of Idaho County Commissioners Meeting, pp. 3-8, attached as  
24 Exhibit E of the *Supplemental Declaration of Counsel* dated November 15, 2013, filed  
25 herein.

1           The words not uttered by Ms. Holman included 'secret' or 'proprietary' or  
2 'confidential.' Instead, she explained and justified each of the elements by which the  
3 Walco's proposal differed from what Idaho County had sought and argued against the  
4 Simmons contract.  
5

6           Walco's claim thus glosses over the fact that their proposal with any and all of its  
7 purported secrets was made known, as was Simmons' proposal, at that October 15, 2012,  
8 meeting. By the end of the meeting, only one person in Idaho County that did not have  
9 access to that figure was Robert Simmons. *See, the Deposition of Robert Simmons* taken  
10 November 5, 2013, p. 21, ll. 9-25, attached as Exhibit O to the *Second Supplemental*  
11 *Declaration of Counsel* dated November 15, 2013. (Brandt called Simmons after the  
12 public hearing.)  
13

14       2.     The Public Meetings of October 16 and 23, 2012.

15           Every detail of the parties' proposals was argued over, explained, and clarified in  
16 the public hearings of October 16 and 23, 2012. In addition, Walco made clear that it had  
17 and examined Simmons' proposal:  
18

19           MS. HOLMAN:     Okay, Now if we go and add the fuel  
20 surcharge with – and he's also doing to be traveling an extra 70  
21 miles per truck up to this area because he's got to go back to  
22 Kamiah. When I figured it out it's an extra \$7,791 for your fuel  
23 that you will be tacked on as soon as you sign on January if it's at  
24 \$4.30. So now if we add 7,000 onto the 77 or 84 plus the extra  
25 tonnage you're at 87,000, same as ours.  
26

1           See, the Transcript of the Board of Idaho County Commissioners Meeting, p. 17,  
2           ll. 15-22, attached as Exhibit E of the *Supplemental Declaration of Counsel* dated  
3           November 15, 2013, filed herein.

4           At page 27, Walco explained how it was that Walco could accomplish those  
5           computations:

6                       MR. HOLMAN:     We have his numbers figured out.  
7                       We have his whole contract figured out because we  
8                       requested it. We have everything and know what it's going  
9                       to cost.

10          See, the Transcript of the Board of Idaho County Commissioners Meeting, p. 27, ll. 6-9,  
11          attached as Exhibit E to the *Supplemental Declaration of Counsel* dated November 15,  
12          2013, filed herein.

13          In addition to the arguments made by Walco during the public hearings, Walco's  
14          counsel demanded that all deliberations regarding the proposals be conducted in an open  
15          meeting and not in executive session. At one point, Simmons asked for an executive  
16          session to show how it had arrived at its figures. Walco, not only made no such request,  
17          but vehemently demanded that all information be discussed in a public forum

18                       Walco submitted all of this information and it was opened for all to  
19                       see. Why is Mr. Simmons allowed to share information in secret  
20                       that Walco was required to expose to the public? If the current  
21                       plan is allowed, Simmons will be permitted, in a non public  
22                       manner, to undercut Walco since, as I will point out below,  
23                       Simmons bid is actually higher than the one submitted by Walco.  
24                       This is patently unfair and it sure to be viewed very critically by a  
25                       court if the current plan is carried out as intended. Thus, Walco  
26                       respectfully requests that the commission abandon the illegal idea  
                     to conduct an executive session and give Simmons an unfair  
                     advantage in this bid process.

1  
2 See, the Letter from Dennis Charney to Kirk MacGregor and the Idaho County  
3 Commissioners dated October 22, 2012, p. 2, attached as Exhibit 0 to the *Declaration of*  
4 *Kathy M. Ackerman*, dated September 27, 2013.

5 Walco went on further by stating:

6 First, we are pleased that the commission agreed that an executive  
7 session was not an appropriate forum to discuss the expenditure of  
8 taxpayer funds. Thank you for making this change. We trust that  
9 all future meetings regarding this contract will be open and  
transparent so this issue will not need to be revisited.

10 See, the Letter from Dennis Charney to Kirk MacGregor and the Idaho County  
11 Commissioners dated October 26, 2012, p. 1, attached as Exhibit YY to the *Third*  
12 *Supplemental Declaration of Kathy M. Ackerman* dated December 6, 2013.

13 Both letters excoriated Idaho County, and made personal allegations against one  
14 of the Commissioners.

15 However, no letter was sent to Simmons and nothing was done to Walco to put  
16 Simmons on notice that any sort of trade secret claim might even be possible as regards  
17 the proposal made by Walco, first made public on October 15, 2012.

18 Walco's chief demand through the 26<sup>th</sup> was that the Commissioners make both  
19 proposals public. From that point forward, as Mr. Charney's letter concedes, the  
20 proposals were "opened for all to see." Mr. Charney went on to issue a rare compliment  
21 to the Commissioners for discussing the competing proposals in open meetings.

22 All-in-all, there was a full throated and vigorous discussion of the competing  
23 proposals—and not a word was said by Walco regarding the fact that some part of what  
24 proposals—and not a word was said by Walco regarding the fact that some part of what

1 they were so vehemently arguing was a secret. Every detail of the proposal was argued  
2 over, explained and clarified, and all in public as demanded by Walco.

3 The undisputed facts show Walco having unreservedly put all aspects of its  
4 proposal before the public. There is no authority that Walco, having once used this  
5 information publicly to win the contract can now reverse course and demand payment for  
6 retrospective protection of this information made public by its own act  
7

8 C. Walco's Claim Fails Because the RFP by Idaho County Was an RFP and Not a  
9 Competitive Bid.

10 The flawed, basic premise of Walco's argument is that the process was an Invitation For  
11 Bids (hereinafter "IFB") and not an RFP. This issue has been carefully briefed and is before the  
12 Court for decision.  
13

14 The argument fails if the premise fails. If this was not a "competitive bid process" then  
15 no wrongful use was made of any asserted trade secret and Walco's claim against Simmons fails.

16 D. Walco's Allegations Fail Because Simmons Did Not Use Information from Walco  
17 in Submitting, Defending and Clarifying Simmons' Proposal.

18 Simmons submitted its proposal on October 12, 2012. Simmons did not learn of the  
19 Walco proposal until after the public hearing on October 15, 2012.  
20

21 Simmons bid was \$77,202 nearly \$10,000 less per month than the Walco bid of \$87,000,  
22 and accommodated county policy on recycling and other issues. Walco was \$87,000 and had a  
23 5% annual increase, compounded, on the entire contract amount and deleted County proposals  
24  
25



1 for recycling. The only pricing variable in the Simmons proposal was for the fluctuation, up and  
2 down, of fuel charges; a figure that would alter somewhat depending on total tonnage.

3 Simmons could not use any information from Walco to formulate its proposal because it  
4 was submitted before Walco made its own proposal public.  
5

6 The main allegation of Walco is that Simmons somehow manipulated the fuel surcharge  
7 figures to reduce its proposal to a price point below that of Walco. This is pure speculation and  
8 factually wrong.

9 Even more critical to this matter, there is no evidence that Simmons wrongfully  
10 manipulated his figures or that the Walco proposal had anything to do with the Simmons  
11 proposal. Walco's allegations are mere speculation not based on any facts whatsoever, much  
12 less admissible evidence and are simply wrong.  
13

14 pp. 47-48, ll. 7-  
15 8

COMMISSIONER BRANDT: Okay, Commissioners, we're back to talking  
trash, and where we left it is Simmons was going to visit about -- with us  
about -- Mr. Simmons was going to visit about the additional cost and fuel-  
age, tonnage, or anything that he would like to share. We've opted not to go  
into executive session so it's whatever you want to give us in opening.

17 MR. SIMMONS: That's fine. I feel that -- just like our fuel surcharge, but I  
18 put it to the month. Okay, what I did was I figured out a monthly total for  
19 MSW of what we're averaging 4500 tons a year is what we figured in our  
20 proposal. Took it straight off of what we do on our regular fuel surcharge 27  
21 tons per load, and then our long-haul gallons are 80 gallons per load that's  
22 what KBC figures in their loads. And then total gallons a week for the  
23 collection and total per month for collection. Today's fuel price is 4.259. I  
24 didn't do an average because I just -- today's fuel price is 4.259. Our starting  
25 price is 259. You can see the difference is 1.669. It comes out to the final  
two down below 1853.25 and 3276.24 for a total of 5,129.49, which would  
bring our total of 77,202 to 82,331.49. That is what a possible fuel surcharge  
would look like. That's a monthly charge, not a quarterly. I broke it out per  
month because I didn't want to get it so confusing of going quarterly back to  
monthly. Usually we give you on the quarter so --

1 Walco spends a lot of time speculating about the fuel surcharge component of the  
2 Simmons proposal. The provision for a fuel surcharge is found at in the model contract included  
3 with the County's RFP. This is the only cost of living type variable in the agreement, and will  
4 go up and down depending on the price of fuel.

5 On October 23<sup>rd</sup>, as quoted above, Mr. Simmons disclosed the methodology for his  
6 calculation of the fuel surcharge, estimating it to be no more than \$5,129.49 per month at current  
7 gas prices at the time, and based on estimated tonnages. See pp. 47-48, ll. 7-8 quoted above.

8 This figure is far different than the figure computed by Walco, quoted above, *See*, the  
9 Transcript of the Board of Idaho County Commissioners Meeting, p. 17, ll. 15-22, attached as  
10 Exhibit E of the *Supplemental Declaration of Counsel* dated November 15, 2013, filed herein.

11 Walco cites no evidence that there was any other basis for the computation of the fuel  
12 surcharge apart from Mr. Simmons testimony.

13 Moreover, real life experience has supported Mr. Simmons calculations as accurate and  
14 the Walco calculation as an inaccurate exaggeration of the possible fuel surcharge.

15 Simmons' fuel surcharges for the first nine months of 2013 totaled only \$31,607.41 (*see*  
16 *id.*) — an average of only \$3,511.93 per month and over \$4,300 per month less than the \$7,900  
17 per Walco calculated and now asserts Simmons quoted.

18 Through November 2013, Simmons has collected 3,656.82 tons of solid waste. (*See*  
19 Ackerman Decl. Exs. W, at 16; *id.* Ex. X at 17; Second Supplemental Ackerman Decl. (Nov. 15,  
20 2013) Ex. II; Third Supplemental Ackerman Decl. Ex. XX.) Simmons would have to collect  
21 over 950 tons in December 2013 to exceed the cap provided by its contract. The monthly average  
22 is about 332.44 tons per month, over the first 11 months of 2013.

23 Walco asserts some nefarious scheme, when the real problem for them is that they simply  
24 wanted more money for the same job than Simmons did.

1 More to the point, there is no evidence that Simmons wrongfully manipulated his figures  
2 or that the Walco proposal had anything to do with the Simmons proposal. Indeed, the Walco  
3 calculation was simply wrong as evidenced by the Simmons calculation of future estimated  
4 charges in 2012 and as experience showed in 2013.

5  
6 E. Assuming, Without Admission, that Simmons Had the 'Use' of Walco  
7 Information since Walco made the Information Public Walco Is, Thus, Estopped from Making a  
8 Claim Against Simmons.

9 Commented to Restatement (First) of Torts § 757 reads:

10 A privilege to disclose or use another's trade secret may  
11 arise from other's consent or from other conduct on his part  
12 by which he is estopped from complaining.

13 Walco's behavior fits this pattern nearly perfectly.

14 If the hearing on October 15<sup>th</sup> was not sufficient, then a careful reading of the transcripts  
15 of the October 16<sup>th</sup> and October 23<sup>rd</sup> meetings makes it even more clear that Walco unreservedly  
16 disclosed its proposal. Not a word was spoken by Walco about keeping their information  
17 confidential. See, Exhibits E and F to the *Supplemental Declaration of Counsel* dated November  
18 15, 2013, filed herein.

19 It is unreasonable to conclude that Simmons could have possibly known that Walco  
20 intended all this information, or even some of it, to be confidential given Walco's own behavior  
21 at the public meetings of October 15<sup>th</sup>, 16<sup>th</sup>, and 23<sup>rd</sup>.

22 Without such knowledge, and with no other basis for imposing a duty on Simmons, there  
23 can be no legal basis to impose such a duty and burden on Simmons.  
24

25  
26 REPLY MEMORANDUM IN SUPPORT OF MSJ—Page 13

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1 Walco cites no authority, and Simmons can find none, that a competitor participating in  
2 an uncensored, open, and public discussion with another competitor can be somehow charged  
3 with a duty to keep confidential and make no use of the openly discussed information.  
4

5 Now, having failed to make a satisfactory proposal, and failed to bludgeon Idaho County  
6 into accepting its inferior proposal, Walco wants to reverse course and claim that Simmons was  
7 acting wrongly in participating in the very course of conduct that Walco demanded that the  
8 Commissioners follow.

9 Walco, having made full public disclosure and use of its proposal, can now claim that  
10 Simmons and/or Idaho County are somehow prevented from taking note of what Walco itself  
11 made public. As such, Simmons is privileged to use the data under the same authority cited to by  
12 Walco. *See*, Comment d to Restatement (First) of Torts § 757.  
13

14 And, even if Simmons did know of the purported claim, once again, how could any such  
15 claim be maintained after Walco's promiscuous communications of such purported secrets?

16 It was not a secret when Walco thought it to their advantage to make it known to the  
17 public, but became a secret when Walco did not get what it wanted.  
18

19 V.

## 20 CONCLUSION

21 Walco's case is long on sour grapes; lacks material facts to support a claim; and is utterly  
22 without legal basis.

23 Walco's core complaint is that the County did not treat them in a fair way. The County  
24 let Simmons demonstrate that Simmons could do the county work as the County wanted it done  
25

26 REPLY MEMORANDUM IN SUPPORT OF MSJ—Page 14

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1 and at a lower price than Walco wanted to pay. Walco does not think this to be fair, a conclusion  
2 fairly described as absurd.

3 Moreover, such claimed grievances do not constitute a valid cause of action.

4 Walco's first cause of action was abandoned by Walco as 'precluded.' It is better  
5 understood as frivolous, or not warranted by existing law or a good faith argument for its  
6 extension.

7 The pleading of this baseless count cost Simmons substantial time and fees, before Walco  
8 made clear in oral argument that the count was not aimed at Simmons but only the County.  
9 Since a tortious interference claim could only be made against a third party, the later  
10 abandonment of the claim against the County was not a surprise but it came only after both  
11 defendants spent much time and effort defending a spurious claim.

12 The second count was no more firmly grounded in the law.

13 The substance of the complaint was that the County and Simmons had somehow acquired  
14 and used a trade secret of Walco and used that to Walco's detriment in a competitive bidding  
15 process.

16 As late as March of 2013, when this complaint was filed, it was still not clear just what  
17 the purported trade secret was.

18 Finally, in Walco's briefing on summary judgment, it was revealed that the mysterious  
19 secret was actually the bid number itself.

20 The problems with a lawsuit based on this are manifold:

- 21 1. A publicly presented bid is not a trade secret.  
22 2. The county process was a request for proposals antecedent to the  
23 negotiation of a contract, not a bid on an existing contract.  
24

1  
2 3. The Simmons proposal was prepared and submitted in writing before the  
3 Walco bid was made public—making it impossible to be derivative of some Walco  
4 secret.

5 4. There is no evidence that Simmons altered his proposal in any way based  
6 on the Walco proposal. That is asserted by Walco but based solely on conjecture.  
7 Simmons' direct testimony is the only admissible evidence on that issue.

8 5. Even if Simmons had taken some aspect of the Walco proposal into  
9 account in the public hearings on the 16<sup>th</sup> and 23<sup>rd</sup> of October 2012, there could be no  
10 liability because the information was not a trade secret.

11 6. Even if the Walco information might have been a trade secret, Simmons  
12 acquired that information in public hearings as Walco used that information in an attempt  
13 to win the County contract. Walco's public airing of the information, without reservation  
14 and even request for confidentiality, means that Simmons did not use improper means or  
15 have improper purpose in acquiring and using such information. Without proof of  
16 improper means to discovery or use the purported secret, there can be no liability.


17 7. Walco's public disclosure of the information in an attempt to win the  
18 contract estopps them from claiming that Simmons somehow used a trade secret.

19 Walco's count II is not well grounded in fact warranted by existing law or a good faith  
20 argument for its extension.

21 Simmons urges that Walco's complaint be dismissed in its entirety and that fees be  
22 awarded Simmons pursuant to I.C. §12-121 and IRCP 54.

1 DATED this 13<sup>th</sup> day of December, 2013.

2  
3 RISLEY LAW OFFICE, PLLC  
4 Attorney for Defendant Simmons Sanitation Service, Inc.

5 By:  ISB No. 9014 for  
6 DAVID R. RISLEY  
7 ISB NO. 1789  
8

9  
10 CERTIFICATE OF MAILING

11 I certify that on December 13, 2013, at my direction, the foregoing *Defendant Simmons*  
12 *Sanitation Service, Inc.'s Reply Memorandum in Support of Motion for Summary Judgment* was  
13 served on the following in the manner shown:

14 Counsel for Plaintiff: (copy)

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16 Charney and Associates, PLLC  
17 1191 East Iron Drive, Suite 200  
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20 Bentley G. Stromberg  
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25  
26  ISB No. 9014 for  
DAVID R. RISLEY

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# APPENDIX



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BEFORE THE BOARD OF IDAHO COUNTY COMMISSIONERS

TRANSCRIBED BY: KEITH M. EVANS, RPR, CSR NO. 655

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kkreport@wildblue.net

1 BE IT REMEMBERED that the above-entitled matter  
2 came on for hearing before the Idaho County Commissioners,  
3 in the Commissioners' Board Room at the Idaho County Courthouse,  
4 City of Grangeville, County of Idaho, State of Idaho.

5 (Thereupon the following oral proceedings  
6 were had as follows, to-wit:)

7 COMMISSIONER BRANDT: I've got 3:00 so let's get  
8 going on the pledge.

9 (Pledge of Allegiance.)

10 COMMISSIONER BRANDT: All right. This is a good  
11 meeting. We have one subject. Okay, the first one was  
12 Simmons Sanitation, and they have -- well, they've got  
13 a base price of 77,202 per month (inaudible) some  
14 detail -- vague detail. And then we have Walco  
15 (inaudible) letter, and they have a base price of  
16 87,000, and a lot more detail. So, Madam Clerk. Are  
17 you doing the Idaho County Light and Power thing?

18 UNKNOWN PERSON: (Inaudible).

19 COMMISSIONER BRANDT: (Inaudible).

20 UNKNOWN PERSON: (Inaudible).

21 COMMISSIONER BRANDT: Pardon?

22 UNKNOWN PERSON: (Inaudible).

23 COMMISSIONER BRANDT: (Inaudible).

24 UNKNOWN PERSON: (Inaudible).

25 COMMISSIONER BRANDT: (Inaudible).

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1 UNKNOWN PERSON: (Inaudible).  
2 COMMISSIONER ROCKWELL: Who all is coming, just  
3 him?  
4 UNKNOWN PERSON: Yeah, but I've got -- so far we  
5 have about 15, 20 legislators, commissioners  
6 (inaudible) showing up in Valley County, and then  
7 (inaudible). If we could just get the commissioners  
8 from Shoshone --  
9 COMMISSIONER BRANDT: Bonner and Boundary.  
10 UNKNOWN PERSON: Bonner and Boundary (inaudible).  
11 COMMISSIONER BRANDT: (Inaudible).  
12 UNKNOWN PERSON: You know who's really excited  
13 about (inaudible).  
14 COMMISSIONER BRANDT: He went south on us  
15 (inaudible).  
16 UNKNOWN PERSON: Yeah.  
17 COMMISSIONER BRANDT: Annulment. I never did get  
18 to sit down and find out why.  
19 UNKNOWN PERSON: Nullification.  
20 COMMISSIONER BRANDT: Nullification. There you  
21 go (inaudible) from the church. (Inaudible). All  
22 right. Hot off the press. (Inaudible).  
23 COMMISSIONER ROCKWELL: This contract is just the  
24 current contract you have, right?  
25 MR. HOLMAN: With some modifications.

1 (Inaudible) I think the one we offered the first time  
2 (inaudible).  
3 COMMISSIONER ROCKWELL: Yeah.  
4 MS. HOLMAN: (Inaudible).  
5 MR. HOLMAN: It's not exactly the same  
6 (inaudible).  
7 COMMISSIONER BRANDT: Similar to except the  
8 points that are --  
9 MS. HOLMAN: Right.  
10 COMMISSIONER BRANDT: You took out the fuel  
11 surcharge and just be an automatic five percent.  
12 MS. HOLMAN: Yes.  
13 UNKNOWN PERSON: (Inaudible).  
14 COMMISSIONER BRANDT: Pardon?  
15 UNKNOWN PERSON: (Inaudible).  
16 MS. HOLMAN: (Inaudible).  
17 COMMISSIONER BRANDT: (Inaudible). I don't see  
18 that in his (inaudible) Simmons' contract (inaudible).  
19 So both contracts, both companies are (inaudible).  
20 MS. HOLMAN: (Inaudible).  
21 COMMISSIONER BRANDT: It is Simmons' contract.  
22 UNKNOWN PERSON: (Inaudible).  
23 COMMISSIONER BRANDT: With both of them they're  
24 putting in consolidated sites (inaudible). Walco is --  
25 reimburses actual expenses. Simmons is negotiated with

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1 the County. Simmons specifies tonnage per year  
2 (inaudible) price. Walco -- you guys have a tonnage  
3 cap in there?

4 MR. HOLMAN: Just everything that -- we kind of  
5 left it like even in consolidation we don't know  
6 exactly what's going to happen on that. It wasn't  
7 clear on it. It would be you guys doing some of the  
8 dirt work or not. If we have to do the dirt work and  
9 everything that's obviously going to be a big cost. So  
10 we just kind of put it -- so I guess it specifies it  
11 like how we were doing it if all the sudden you did a  
12 lot of the costs then obviously there wouldn't be any  
13 costs passed through so that's how (inaudible)  
14 consolidation then there's no cap on the tonnage.

15 COMMISSIONER BRANDT: Okay, but it says County  
16 will reimburse for actual expenses so material, labor,  
17 everything.

18 MS. HOLMAN: Yeah, if you guys want (inaudible)  
19 material labor, stuff like that, you know (inaudible)  
20 labor. When we talk to you guys (inaudible) just  
21 having it right there (inaudible) our area how it's  
22 going to go (inaudible) having it right there I don't  
23 know if we're going to be able to do it. If not, maybe  
24 we have to add more routes so we're not really sure  
25 (inaudible) lot of speculation (inaudible) make sure

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1 that we were covered (inaudible.)

2 COMMISSIONER BRANDT: Okay. Well, Commissioners,  
3 you've got (inaudible). Tomorrow at 2:30 we have time  
4 scheduled for this.

5 COMMISSIONER CHMELIK: (Inaudible).

6 COMMISSIONER ROCKWELL: Not really, though. What  
7 we said was we were using the contract with the  
8 surcharge.

9 COMMISSIONER CHMELIK: Right.

10 COMMISSIONER ROCKWELL: So if you don't use that  
11 contract it's basically non-responsive. We can run the  
12 numbers and we should (inaudible) and it has a  
13 surcharge.

14 MS. HOLMAN: (Inaudible) it has a lot of things  
15 in your contract that (inaudible). It wasn't stated in  
16 your coversheet (inaudible) whatever. So you had to  
17 kind of bid it off of (inaudible) we work with you guys  
18 and knew kind of what the gist was but (inaudible) area  
19 and what we're looking at and just, you know, comparing  
20 to Robert and what he did in his area and how it went  
21 down, and (inaudible) price per ton and just the gist  
22 of (inaudible) look at it. You take Robert's tonnage  
23 divided by what he's getting at 215 a ton. We're  
24 getting 160 when you take what we get paid. So, you  
25 know, a lot of things --

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1           COMMISSIONER BRANDT: You lost me on that past  
2 history of their tonnage versus your tonnage.

3           MS. HOLMAN: No, right now what Robert is getting  
4 paid for his contract based on what he gets paid  
5 (inaudible) doing. When you take what you pay him per  
6 month per year and divide it by the tonnage (inaudible)  
7 \$215 per ton. You take what we get paid per year what  
8 we're doing for the tonnage we're giving you -- we're  
9 getting \$160 a ton, and all we're trying to say is  
10 that, you know, when you take a good look at it we kind  
11 of know our area. We have a lot of things in the  
12 contract and --

13          MR. HOLMAN: There's a lot of stuff in our  
14 contract because we know what works in there so I guess  
15 is covering every aspect.

16          MS. HOLMAN: The reason we got rid of the fuel  
17 surcharge is because it was kind of an up and down  
18 volatile.

19          MR. HOLMAN: We don't know if we were supposed to  
20 follow the old rules and put our base at 267 because  
21 for us that adds (inaudible).

22          MS. HOLMAN: (Inaudible) averaged over a year --  
23 extra a month so it didn't say -- the bid  
24 specifications were lacking on our part so we just put  
25 in the same because we thought it would make it easier

1 where you didn't have to do the fuel surcharge. That  
2 covered it from -- I think we put in like 4 or \$5  
3 (inaudible) averaged (inaudible) come in and say, okay,  
4 then we adjust the price and work with the price.

5 COMMISSIONER BRANDT: So just from -- for  
6 clarification the five percent annual cost of living,  
7 are you looking at that only being on a fuel component  
8 or on the total (inaudible.)

9 MR. HOLMAN: (Inaudible) total. They got rid of  
10 that element of what the cost of living goes up or  
11 down. We gotten way behind on this contract that's the  
12 problem we're having, and it's because the cost of  
13 living aren't keeping up with what our costs for the  
14 garbage industry is.

15 COMMISSIONER BRANDT: So the five percent is on  
16 the 87,000 (inaudible).

17 MR. HOLMAN: Yes. Yes.

18 COMMISSIONER BRANDT: That gets away from your  
19 CPI adjustment and fuel surcharge.

20 MR. HOLMAN: Yes.

21 COMMISSIONER BRANDT: Got you. Commissioners,  
22 any further questions or --

23 COMMISSIONER ROCKWELL: No.

24 COMMISSIONER BRANDT: Are you guys able to come  
25 in tomorrow at 2:30?



1 MR. HOLMAN: Yeah.

2 COMMISSIONER BRANDT: Okay. Anything else?

3 (Inaudible)? All right.

4 MR. HOLMAN: (Inaudible) happens as far as  
5 contract we do like to say we do appreciate the work  
6 we've got to do with you over the years (inaudible.)

7 COMMISSIONER BRANDT: Thank you, Patrick. Thank  
8 you, Marietta.

9 (End of first recorded segment.)

10 COMMISSIONER ROCKWELL: I have a couple of  
11 questions. The transfer station I guess this could be  
12 a question to you, Robert. Because you don't have a  
13 transfer station up here and Walco does just in the  
14 grand scheme of things how do you propose or suggest  
15 you're going to take care of the county citizens who  
16 are used to dumping at the transfer station?

17 MR. SIMMONS: This proposal we did was literally  
18 doing the route themselves, not putting up any other  
19 roll offs at this time to take care of that. I don't  
20 know how many people are driving from Cottonwood all  
21 the way over here to use their transfer station or from  
22 Riggins or from Elk City.

23 COMMISSIONER ROCKWELL: (Inaudible).

24 MR. SIMMONS: So until something was figured out  
25 in that area for the longterm Grangeville area would be

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1 the only one that would be a concern, and I don't know  
2 if there's going to be a fee involved for the  
3 residents. If we were to get the bid if Walco was  
4 going to put a fee onto that or how that would work,  
5 but that was not part of my proposal.

6 COMMISSIONER ROCKWELL: Pat, have you guys put a  
7 number on that?

8 MR. HOLMAN: It's going to probably have to be --  
9 I'm going to say the way we're going to do it is we're  
10 going to probably by the site of the pickup. We're not  
11 going to weigh every load that comes out. We get quite  
12 a bit from the Grangeville area and substantial amount  
13 actually out to Cottonwood. From the Salmon River it  
14 isn't as much. It's mostly in the dumpsters. I can't  
15 put an exact price on it. It's going to be a per truck  
16 price.

17 MS. HOLMAN: (Inaudible) per month price what we  
18 would charge the County on top of (inaudible) Simmons  
19 (inaudible).

20 MR. HOLMAN: That is -- well, let me put it this  
21 way. It's a difficult thing to say because if he all  
22 the sudden -- something changes on consolidated sites  
23 let's say we give you a price of 5 or \$10,000 a month  
24 right now and the sites change and it goes to  
25 consolidation and all the sudden we have a third as

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1 much out at our transfer station it's going to be hard  
2 for us to say that is a solid price that's going to  
3 cover. So we'll probably just go to a pay per  
4 truckload, and people will just pay at the gate. We'll  
5 just do a cash basis. That's kind of like how Ada  
6 County does it, different things.

7 COMMISSIONER ROCKWELL: Right.

8 MR. HOLMAN: But that's the only way we can come  
9 up with a system to do that. I don't know how to give  
10 an umbrella number without --

11 COMMISSIONER BRANDT: How do you do it with the  
12 Salmon River route (inaudible) let's say when somebody  
13 shows up?

14 MR. HOLMAN: They would have to just pay when  
15 they got there.

16 COMMISSIONER BRANDT: Yeah. Do you have a set  
17 fee, I mean, what do you charge for a pickup load?

18 MS. HOLMAN: Right now basically everything is  
19 free unless it's in an oversize (inaudible) trailer  
20 load or a construction company. Very rarely do we  
21 charge anybody that's just bringing a pickup load  
22 (inaudible) even solid waste, anything out there. It's  
23 just (inaudible). You know, more than likely  
24 everything down in the Riggins area if it gets  
25 separated they're either going to need something extra

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1 for roll offs or they bring it to us then it's going to  
2 be probably -- it's either you guys want a blanket  
3 coverage with the payment to us to be open, and we keep  
4 the system the same, then we would have to figure out a  
5 price on what it's going to be because it's obviously  
6 going to increase the tonnage we put in our landfill  
7 because of the separation of wanting to go to  
8 consolidation. To guess what's going to be coming out  
9 there for (inaudible).

10 MR. HOLMAN: I think we both run it similars.  
11 Basically been free, for the most part, probably  
12 95 percent of people is free. The reason is has been  
13 to keep it out of the containers because as soon as you  
14 start charging it goes directly to the containers so  
15 it's kind of a --

16 COMMISSIONER BRANDT: (Inaudible) one way or the  
17 other.

18 MR. HOLMAN: Yes.

19 MS. HOLMAN: (Inaudible).

20 COMMISSIONER ROCKWELL: So, Robert, in your bid  
21 are you estimating that -- that because you don't have  
22 a transfer station as a Grangeville resident I'm  
23 (inaudible)?

24 MR. SIMMONS: Yes.

25 COMMISSIONER ROCKWELL: (Inaudible). You do have

1 an estimate of what you thought that would do in terms  
2 of volume?

3 MR. SIMMONS: I took off volume that we're doing  
4 now and put that between the population bases  
5 (inaudible) and came up with that figure. That's how I  
6 came up with that figure.

7 COMMISSIONER ROCKWELL: Does that extra volume  
8 push us above the 4500?

9 MR. SIMMONS: No.

10 MR. HOLMAN: I don't quite understand that right  
11 there just from what we do per tonnage.

12 COMMISSIONER ROCKWELL: Why do you say that?

13 MR. HOLMAN: Because we're between --

14 MS. HOLMAN: 4500 now (inaudible.)

15 MR. HOLMAN: We're at 4500 now in the containers.  
16 We take a lot at our transfer station. We're as high  
17 as five or more. It's been quite a bit different on  
18 the year so unless something changes and people don't  
19 (inaudible) garbage anymore I don't --

20 MS. HOLMAN: Well, we were just wondering if we  
21 could get a clarification on the -- obviously he said a  
22 tonnage cap. So I'm assuming 4500 is the tonnage cap.  
23 What is the price per ton above the tonnage cap?

24 MR. SIMMONS: 75.06 is our MSW tonnage price.

25 MS. HOLMAN: So if he does 500 tons at 76

1 that's -- over the year, you know, times that's an  
2 extra --

3 MR. SIMMONS: \$75.06 is our tonnage fee.

4 MS. HOLMAN: Yeah. So if we're estimating  
5 500 tons of non-MSW that would be attributed to Idaho  
6 County, if not more. At just \$76 a ton that's an extra  
7 3,000 that you guys billed on top of the 77,000.

8 COMMISSIONER ROCKWELL: I think it's an extra  
9 (inaudible).

10 MS. HOLMAN: If we're estimating that we get 4500  
11 in the containers plus if you're going to consider the  
12 stuff that might be kicked back out if we're accepting  
13 it that's an extra 500 tons, not 700 tons, at \$77 above  
14 your cap, which is what might be charged to you, you're  
15 looking at possibly another \$3,100 a month on top of  
16 the 77.

17 COMMISSIONER ROCKWELL: What do you think of  
18 that, Robert?

19 MR. SIMMONS: That is a possibility. The biggest  
20 thing is as you sit right here as the Idaho County  
21 Commissioners you have to think of where you want to be  
22 in 10 years. I sure hope you don't want to be in the  
23 same situation with all the dumpsters scattered around  
24 everywhere like they are. I think they need to be  
25 consolidated. I think we need to look at drop-off

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1 sites in different areas and for bulky waste items and  
2 move on from there. Once you build your consolidated  
3 sites and take that trucking site down those  
4 consolidated sites should help pay for any other site  
5 that you might put in place. You're talking you're not  
6 running your truck that far out anymore. You have a  
7 central location for people to come. The same way we  
8 did our consolidated sites with literally you're coming  
9 down off the hill. You're coming down into town  
10 anyway. You localize those sites, and then you make it  
11 so that you can move it in. We have our sites all in  
12 Kooskia and everything and right now they're getting  
13 all the brush and everything in unless they want to  
14 drive the additional --

15 MR. HOLMAN: So are you proposing we take all the  
16 Salmon River sites and Elk City sites and just move  
17 them to Grangeville, because if we cannot bid it that  
18 way.

19 MR. SIMMONS: No, that's not what I bid.

20 MS. HOLMAN: When we look at -- here's the thing.  
21 When we look at --

22 COMMISSIONER ROCKWELL: Let me just ask if you  
23 wouldn't mind (inaudible) so in your \$77,000 price you  
24 see efficiency somewhere down the road that wouldn't  
25 cause an increase (inaudible).

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1 MR. SIMMONS: Preliminary, yes, we're looking at  
2 (inaudible).

3 COMMISSIONER ROCKWELL: Sorry about that,  
4 Marietta.

5 MS. HOLMAN: Oh, that's fine. That's fine. But  
6 see when we look and compared to our area (inaudible)  
7 they go as far as 25 miles. That's the farthest they  
8 go to the Harpster. The other ones are 10 or less  
9 than, you know, 20 miles from their transfer station.  
10 Ours are 65 miles. I mean, Pollock is that far and Elk  
11 City is that far. And then the prairie is we got  
12 Cottonwood and Graves Creek and all these ones that we  
13 don't get to consolidate any closer to where we are.

14 MR. HOLMAN: We want to consolidate. We're all  
15 on board with it, but I don't know how you take  
16 dumpsters from the Salmon River and say -- we tried  
17 that already. I told you I would like to have all the  
18 sites on this side of Whitebird -- or not Whitebird,  
19 Riggins, and when we made all the arrangements with you  
20 we had to put them as far down as Pollock still. So  
21 we've saved 10 miles going to Elk Lake and back or 13.  
22 That's 13 miles. That's all we've saved off that trip.  
23 Now, if we (inaudible) it would be great but in  
24 Robert's area the deal was made you consolidated you  
25 ran roll offs. He never had to run the roll offs.

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1 When we came in to talk with you you said we had to put  
2 sites out and run roll offs, which is an extra trip  
3 with a roll off truck. If we don't run a roll off down  
4 there there has to be the exact same amount of service  
5 from down there because you are not going to have  
6 anyone from the Salmon River come all the way up to  
7 Grangeville to use our transfer station. So we had to  
8 leave all the routes the same because we have no way of  
9 possibly dropping routes, especially with one right in  
10 Riggins now.

11 MS. HOLMAN: And we have one more question. Does  
12 the 77,000 cover -- what is the fuel price of the 77?

13 UNKNOWN PERSON: 259 right in the contract that  
14 was (inaudible) proposal.

15 MS. HOLMAN: Okay. Now if we go and add the fuel  
16 surcharge with -- and he's also going to be traveling  
17 an extra 70 miles per truck up to this area because  
18 he's got to go back to Kamiah. When I figured it out  
19 it's an extra \$7,791 for your fuel that you will be  
20 tacked on as soon as you sign on January if it's at  
21 \$4.30. So now if we add 7,000 onto the 77 or 84 plus  
22 the extra tonnage you're at 87,000, same as ours.

23 MR. HOLMAN: Our bids were almost --

24 COMMISSIONER ROCKWELL: Robert, what do you think  
25 of that?

1           MR. SIMMONS: I did not do the extra mileage  
2 on -- for that. But we were actually pretty close in  
3 the -- I think it was (inaudible) figured the five --  
4 about 79. But that is where the fuel surcharge is.  
5 That's where it's at. The biggest thing I look at on  
6 our bid was we were not going to stay the same very  
7 long. It would be our job to literally come in and  
8 find the savings to consolidate the sites, build many  
9 drop-off sites or whatever it took to get this to where  
10 it should have been. I'm not saying anything bad about  
11 Walco, also us is even our sites right now that we've  
12 built right now we are still 10 years behind where  
13 everybody else is on what everybody else is doing to  
14 manage their solid waste. So we need to move quickly  
15 to get this done, whether it would be us or Walco, to  
16 get Idaho County where it needs to be. Other than that  
17 you're going to see a constant increase in everything.  
18 We have a gigantic antiquated system that even with our  
19 consolidated sites in Kooskia and Harpster and upriver  
20 and Big Butte, School House and all of that. It's  
21 still an antiquated system. We still need -- I'm going  
22 to be looking at a drop-off system in Kooskia that will  
23 be there all the time. That's one thing we're looking  
24 at. That will save me route time on our other  
25 dumpsters which, in turn, will pay for that site. So

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1 I'm not going to come back to you guys and say I need  
2 this much more money. I'm going to make it work so  
3 that we're taking it off the route times to pay for  
4 that site.

5 UNKNOWN PERSON: Your efficiency.

6 MR. SIMMONS: Yes.

7 MS. HOLMAN: We disagree. I don't think the  
8 dumpster system is antiquated. I think we provide more  
9 service with the dumpsters than we can with the roll  
10 offs and the shipping and that kind of stuff. When we  
11 have Elk City we drive 210 yards available every week,  
12 and you want to go to putting dropoff boxes at 40-yards  
13 and roll offs and you have two separate ones. You're  
14 going to be making two separate -- four separate trips  
15 when we're making two for the same tonnage -- for the  
16 same amount of yards. Yes, there is some shipping  
17 involved, but at the same time the tonnage that comes  
18 to us isn't always going to be as (inaudible) I guess  
19 (inaudible). Because we're going to have more, you  
20 know, time compacting it, the permitting, all that kind  
21 of stuff. It doesn't necessarily mean it's going to be  
22 a savings. Do we want diversion there, sure. But when  
23 you guys were looking at doing the landfill it wouldn't  
24 have mattered. So it is something that we need to  
25 advance to, but what was asked in the proposal was you

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1 wanted 34, to eight to 12 sites, no talk of advancing  
2 to the drop-off boxes. We never said we weren't at all  
3 interested in that, but when we were asked to do it  
4 this way that's great.

5 MR. HOLMAN: We gave a complete bid (inaudible).

6 MS. HOLMAN: Robert for three years has been  
7 doing it just picking up the dumpsters, no progress in  
8 the roll offs. So I think we should be extended the  
9 same courtesy. I think it's evident even in both  
10 proposals that we've been losing a heck of a lot of  
11 money in Idaho County, and we've been doing a good job.  
12 We've be here. We've been cleaning up the sites.  
13 We've come in here to work with you guys. We just  
14 wanted a solid contract to go forward because we were  
15 putting a lot of money out.

16 COMMISSIONER ROCKWELL: Marietta, three times in  
17 writing we went to you and said (inaudible). We'd like  
18 to negotiate with you; are you interested? Three  
19 times.

20 MS. HOLMAN: No, it wasn't a negotiation. It was  
21 (inaudible).

22 COMMISSIONER ROCKWELL: Actually, that's not what  
23 we said. Three times you said, no.

24 MS. HOLMAN: (Inaudible).

25 COMMISSIONER ROCKWELL: So I don't know

1 (inaudible).

2 MR. HOLMAN: We said we wouldn't do it with the  
3 recycling in there.

4 COMMISSIONER ROCKWELL: (Inaudible) no twice in  
5 my opinion.

6 MR. HOLMAN: Because you had recycling in there.  
7 Recycling you had as a tonnage based figure.

8 COMMISSIONER ROCKWELL: I'm not saying it's  
9 recycling or not.

10 MR. HOLMAN: We are. That's why we didn't agree  
11 on it. We couldn't agree to a tonnage based contract  
12 when we're not tonnage based.

13 COMMISSIONER BRANDT: Patrick, what Commissioner  
14 Rockwell is saying you didn't come to us and say, we  
15 will not accept that line. Your attorney sent us a  
16 letter and you said (inaudible).

17 MR. HOLMAN: We tried to have you sign it three  
18 times in here, and you guys wouldn't sign it because  
19 you said we had to work on the recycling. At that  
20 point we knew there was going to be no way to further  
21 in this contract we're at.

22 COMMISSIONER BRANDT: All right, but at that  
23 point also your base is 60 something thousand dollars.

24 MR. HOLMAN: Right, and you guys didn't want to  
25 take that.

1 COMMISSIONER BRANDT: Let's say, we did, you're  
2 losing money. Let's say we threw the recycling away  
3 and we kept your \$60,000 base.

4 MR. HOLMAN: Because we saw an opportunity to  
5 consolidate and try to get where we could make money.  
6 When the recycling got involved we saw that all we were  
7 going to do is be nickeled and dimed on things that we  
8 couldn't control. (Inaudible) get to this point.

9 COMMISSIONER BRANDT: If we throw out that  
10 60,000 -- if we throw out that recycling component  
11 you're going to go back to your base?

12 MR. HOLMAN: Absolutely not. We lose enough  
13 money right now. We went and refigured everything.

14 COMMISSIONER BRANDT: But then --

15 MS. HOLMAN: All we're saying is that when we  
16 said to put it out to bid is that we wanted a fair  
17 shake and a fair price, and what we saw when we were  
18 going through contract negotiations when we were going  
19 through them was that we weren't getting (inaudible)  
20 recycling. We weren't talking about what we were doing  
21 for Idaho County. So we were like, okay, put it on  
22 paper what you want, and that's what you guys did. To  
23 jump and have somebody say, okay, we're going to  
24 advance and do more and more and more even though they  
25 haven't done it in their original area that we had to

1 like do ours off of, and to have it be almost undersold  
2 because, oh, we're going to, you know, advance we're  
3 going to put drop-off boxes and stuff like that.  
4 That's hard for us to say. We wanted you to put it in  
5 writing what you wanted, how you wanted it, and we  
6 would bid it that way.

7 COMMISSIONER ROCKWELL: Robert bid it that way,  
8 and you bid it that way.

9 MS. HOLMAN: Yes, but there's a lot of --

10 COMMISSIONER ROCKWELL: I look at Robert's bid,  
11 and I think he's bidding it the way we asked him to.  
12 Same with you, Marietta. I don't think -- he can talk  
13 about expansion and efficiencies, that's his business,  
14 but our business is to create a county-wide collection  
15 system, which we asked you to bid. You bid. We asked  
16 Robert to bid, and he did. (Inaudible.) So it's  
17 apples and apples there when I'm looking at the  
18 numbers. That's -- you keep saying this is all  
19 contingent upon efficiency. He's saying (inaudible.)

20 MS. HOLMAN: I guess we just wanted to make sure  
21 (inaudible) one way or another (inaudible) antiquated  
22 system (inaudible).

23 MR. HOLMAN: When she says the dumpster system  
24 works the best, she's not saying the dumpster system  
25 everywhere it is. She's saying, yes, consolidation get

1 it in sites. Robert (inaudible). I see no problems  
2 with it. We talked a lot about doing that, but we  
3 don't see a way to ever get away from the dumpster  
4 system. I don't know how we can ever get away from the  
5 dumpster system in this area. Lewis County that's  
6 going to be gone.

7 COMMISSIONER BRANDT: I think we all agree.

8 MR. HOLMAN: But it's hard. So we're putting  
9 basically the cantonized (phonetic) sites. We want to  
10 do it, but we have to have help from you, and that's  
11 why we have it priced that way.

12 MS. HOLMAN: (Inaudible) advance and do different  
13 things, you know, dumpster sites lower, upper, down  
14 there, that's all in there. That's the same advantage  
15 you have with us to do -- we also -- the benefit to us  
16 is the transfer station is centrally located and  
17 available for everybody. So we can do the  
18 consolidating. They have a place to go. Because at  
19 Robert's price is right up there at the 87,000  
20 (inaudible).

21 COMMISSIONER ROCKWELL: That's your opinion  
22 that's not his. And, again, as a county --

23 MS. HOLMAN: No.

24 MR. HOLMAN: 7900 a month in fuel (inaudible.)

25 COMMISSIONER ROCKWELL: (Inaudible) if you tell

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1 us your number is 82,000 I'm going to take that number.  
2 Robert tells us his number is whatever it is  
3 (inaudible) take that number. Again, I don't want to  
4 throw anything in here that's extra.

5 MR. HOLMAN: Well, but it is.

6 COMMISSIONER ROCKWELL: You shouldn't be talking  
7 for him, though, or vice-versa I think relative to  
8 numbers. If he tells us his number I'm got to count on  
9 that, and that's the check we're going to write.

10 MR. HOLMAN: Well, we have to because you are  
11 comparing two different bids right now. He bid his one  
12 way, and we bid ours another. And they came to the  
13 same number essentially.

14 COMMISSIONER ROCKWELL: Just as a for instance we  
15 asked you to bid a specific contract and specific ideas  
16 in that contract, and you chose not to --

17 MR. HOLMAN: And we did.

18 COMMISSIONER ROCKWELL: -- so how do we do that?

19 MS. HOLMAN: How did -- Robert just quoted the  
20 transportation (inaudible).

21 MR. SIMMONS: The total I bid actually states  
22 that we were using the (inaudible) transfer station.  
23 The proposal we put together literally states that what  
24 is going in the dumpsters right now that we figured at  
25 that tonnage rate we will take care of it up to that

1   tonnage rate.  If you want to be flexible and say you  
2   want to be charged by the month by the ton so that if  
3   we come out with less tonnage you're only paying that  
4   much that's fine with us.  That tonnage figure is just  
5   the tonnage figure we never get to see anyway.

6           UNKNOWN PERSON:  (Inaudible).

7           MR. SIMMONS:  Well, that was off Marietta's  
8   numbers.

9           UNKNOWN PERSON:  (Inaudible).

10          MR. SIMMONS:  That's Marietta's numbers.

11          MS. HOLMAN:  (Inaudible.)

12          UNKNOWN PERSON:  (Inaudible).

13          MR. SIMMONS:  It depends on how many trucks we  
14   roll out there on these routes depending on what we can  
15   do.  Like I said, I don't think we're going to be in  
16   the -- with what we have up there now for very long.  
17   We're going to be cutting and changing immediately to  
18   get that down.

19          MR. HOLMAN:  So we left our bid with an exact  
20   number of what you're going to get.  He left his bid  
21   with a gray area, a gray area that can pretty much be  
22   manipulated any way you want right now.  It's not  
23   really a fair bid.

24          COMMISSIONER ROCKWELL:  What?

25          MR. HOLMAN:  I'm saying -- he's saying

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1 (inaudible) he's saying on fuel surcharges there's  
2 gallons that you should have in there. This is a  
3 number you guys need to know to compare these. We gave  
4 you a complete bid with everything answered. His is  
5 gray. I would like to know how many gallons he has in  
6 there to use. We have his numbers figured out. We  
7 have his whole contract figured out because we  
8 requested it. We have everything and know what it's  
9 going to cost.

10 COMMISSIONER ROCKWELL: Patrick, I wish you would  
11 have bid as we requested because --

12 MR. HOLMAN: How did we not?

13 COMMISSIONER ROCKWELL: You say a five percent.  
14 His is what we had in the contract (inaudible) which  
15 was a surcharge (inaudible.)

16 MS. HOLMAN: (Inaudible.)

17 COMMISSIONER ROCKWELL: (Inaudible) what we  
18 asked.

19 MS. HOLMAN: (Inaudible).

20 COMMISSIONER ROCKWELL: (Inaudible).

21 MR. HOLMAN: He didn't.

22 MS. HOLMAN: If you're going to do it it's the  
23 same. He didn't bid it according to this.

24 MR. HOLMAN: Well, if we bid what you ask the  
25 contract here says you'll take it for \$60,000 a month.

1 So does that mean that if we take this we take it for  
2 60,000 a month, because that's in the specs, project  
3 specs. So whose problem is it here?

4 COMMISSIONER ROCKWELL: So you didn't bid the  
5 60,000?

6 MR. HOLMAN: No, but you're saying now that if we  
7 take that that's what we're supposed to do.

8 MS. HOLMAN: It was an offer. It's where you go  
9 in and negotiate.

10 MR. HOLMAN: Ours is a bid proposal. Proposal is  
11 the key word. You're saying in our 20 some sheets of  
12 bid we didn't cover the things and his one sheet did?  
13 There's a lot of things in there we put that we spent a  
14 lot of time doing because your bid proposal said you  
15 had to have all that in there. He bid one sheet. We  
16 have a letter from the bank saying we can afford to do  
17 this. It asks for it. I used to do bids. I took  
18 construction management. I know how to bid a contract.

19 COMMISSIONER BRANDT: Let's go down to -- okay,  
20 you're not willing to do anything with the recycling?

21 MR. HOLMAN: Yeah, we're going to probably offer  
22 recycling. So we sure can't pay a third party to do  
23 it. We've always claimed we were going to do  
24 recycling.

25 MS. HOLMAN: We were going to do drop boxes back

1 in our town.

2 COMMISSIONER BRANDT: And the consolidation of  
3 any dumpsters is totally us reimbursing all actual  
4 expenses?

5 MR. HOLMAN: Yeah, because we don't know where  
6 you're going to pick. If you pick a place that's in  
7 the middle of a rock pit somewhere and we have to blast  
8 or something due to dirt work I don't know that wasn't  
9 specific either. Does it mean -- your specs didn't say  
10 if you're doing the ground work and materials and we do  
11 labor. It didn't state so we had to leave that. It  
12 said in here you were going to negotiate with a  
13 contract that was apparent bidder so --

14 COMMISSIONER BRANDT: I guess that's really the  
15 question.

16 UNKNOWN PERSON: It didn't say low bid.

17 MR. HOLMAN: Sorry, that you choose, my  
18 apologize.

19 COMMISSIONER BRANDT: Is there negotiations on  
20 this or is it --

21 MR. HOLMAN: Absolutely, but we're not going to  
22 negotiate here because it's not fair to Robert or us to  
23 negotiate numbers until you guys pick. I mean, that's  
24 both of ours advantage.

25 MS. HOLMAN: We were just trying to show we're

1 basically the same price (inaudible) extras and  
2 (inaudible).

3 COMMISSIONER ROCKWELL: So I don't have any other  
4 questions, Skip. I had one thought that maybe we enter  
5 into negotiations with the current low price bid and if  
6 that is unsuccessful we move onto the second low  
7 bidder. I don't know how we're going to do this but --  
8 (Inaudible) low bidder is (inaudible) Walco says it's  
9 (inaudible) Simmons is the low bidder. There are soft  
10 costs that are brought back into the Simmons' contract  
11 which may alter that. Walco believes both numbers are  
12 similar. Simmons believes his is less expensive by  
13 5,000 bucks (inaudible).

14 MR. MACGREGOR: I couldn't remember when we put  
15 it out for bid did we set a deadline after the bids  
16 came in?

17 COMMISSIONER ROCKWELL: (Inaudible).

18 MR. MACGREGOR: I don't have that in front of me.  
19 You may want to consider -- I mean, just look at this  
20 and consider what Walco is saying and make sure.

21 COMMISSIONER ROCKWELL: I'm saying I think it's  
22 necessary not to award (inaudible) enter into  
23 discussions with the current low bidder, and then find  
24 out some (inaudible) if it is true of the two  
25 numbers -- after talking with Robert the two numbers

1 are identical then we have a different animal.

2 MR. MACGREGOR: Right. I agree.

3 MR. HOLMAN: It doesn't really matter. He's got  
4 the advantage now. He knows our numbers. So, I mean,  
5 you might as well just award it to him. If I were  
6 Robert I would take it.

7 MR. SIMMONS: You can fit that in there that I  
8 would have to come into executive session and show you  
9 the numbers for -- if that's the number that is really  
10 sticking (inaudible.)

11 MS. HOLMAN: (Inaudible.)

12 MR. SIMMONS: We're not talking about  
13 consolidated sites at the moment. We're talking about  
14 the original bid. If that's the bid price for fuel  
15 surcharge at this point in time. I don't have a  
16 problem showing you those numbers in executive session  
17 for proprietary reasons.

18 COMMISSIONER ROCKWELL: I don't know, what do you  
19 think, Skip?

20 COMMISSIONER CHMELIK: I would be really  
21 interested to know (inaudible). Without that number  
22 it's not on this bid (inaudible).

23 MS. HOLMAN: Consider the tonnage cap and the  
24 transfer station. So if the transfer station is  
25 anywhere from five to 10,000 for us to run it

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1 (inaudible) usual (inaudible.)

2 MR. HOLMAN: (Inaudible) yourself awarding a bid  
3 to a contractor not offering a transfer station for the  
4 same price.

5 COMMISSIONER ROCKWELL: He's offering a transfer  
6 station. One of the things that he pointed out is that  
7 Cottonwood, Riggins, those areas don't use this  
8 transfer station. This is almost strictly a  
9 Grangeville transfer station.

10 MS. HOLMAN: But if you force the consolidation  
11 that will force people to do the right thing. People  
12 have to do the right thing, and they have to go to our  
13 transfer station and it's not available and they have  
14 to travel an extra 70 miles (inaudible.)

15 COMMISSIONER ROCKWELL: (Inaudible) Robert said  
16 was he expects the extra garbage to end up in his  
17 dumpsters, and he's willing to get rid of that for  
18 77,000 bucks, is that correct, Robert, or not?

19 MR. SIMMONS: At the 4500 ton cap (inaudible) the  
20 percentage of garbage we're doing right now in Kamiah  
21 per capita for all non-MSW included and all MSW  
22 included for every number that you guys give to us off  
23 of the figures from Walco land, Simmons' land and  
24 putting that figure against Walco's figures how I came  
25 up with (inaudible) 4500 tonnage. And also on our



1 sites we did put role-offs out. We put them out for  
2 three months, advertised, no one showed up. We didn't  
3 get one drop of anything in there. People are now  
4 driving over and bringing their stuff to us or calling  
5 us, using boxes, but we feel it's time that we need to  
6 look -- we're also wanting to look 10 years down the  
7 road. It's time for us to look to see if we put in a  
8 site at Kooskia what would that do to us at our same  
9 price we're doing now. Would it lower our trucking  
10 enough and routes enough to pay for itself to do that.  
11 That's what (inaudible).

12 COMMISSIONER ROCKWELL: (Inaudible).

13 MR. SIMMONS: It would be more of a drop-off  
14 session. There's a thin line on regulations and what  
15 you have there.

16 COMMISSIONER ROCKWELL: What happens now in  
17 Riggins? They don't have a transfer station; they just  
18 throw it in the dumpster?

19 MR. HOLMAN: Everything goes in the dumpsters.

20 MS. HOLMAN: You just put a (inaudible).

21 COMMISSIONER ROCKWELL: (Inaudible) Cottonwood.

22 MR. HOLMAN: Cottonwood is a mix. We get quite a  
23 few customers from that area. I mean, passed  
24 Cottonwood I would say it's getting kind of a stretch,  
25 but Cottonwood to Grangeville we get quite a bit. The

1 whole prairie as far as like Tolo, all that, we do a  
2 lot of business at our transfer station. So that's --  
3 I mean, it's going to put more tonnage on that. I'm  
4 sorry, I apologize, Robert. I'm not trying to speak  
5 your numbers.

6 MR. SIMMONS: That's fine.

7 MR. HOLMAN: We know the area. We've been here  
8 40 years doing it. We know the history and what people  
9 are going to do. Our bid had to cover that. I mean,  
10 that's just how it is. I know that if our transfer  
11 station is not open that 4500 cap is -- where is it  
12 going to go? I don't understand where it's going to go  
13 because (inaudible.)

14 MS. HOLMAN: (Inaudible) transfer station  
15 (inaudible) not trying to threaten or anything  
16 (inaudible) late Saturday and Sunday because we would  
17 need to be (inaudible) weekdays.

18 UNKNOWN PERSON: (Inaudible).

19 COMMISSIONER BRANDT: Okay. I see we need to  
20 crunch a lot more numbers.

21 MR. HOLMAN: After all this Robert may still be  
22 lower, but I just wanted to make sure all the numbers  
23 are considered before you get to an awarding process  
24 because I don't want to know that we didn't let you  
25 know where he possibly might be without us at least

1 defending our side and saying where our number is. So  
2 he may still come out lower after you're done  
3 crunching. I just didn't want it to be 77,000 as  
4 compared to 87,000 as a black and white number.

5 MR. MACGREGOR: I would say table it for a month  
6 -- I mean, for a week -- for a week and crunch some of  
7 the numbers.

8 COMMISSIONER ROCKWELL: Can we do something so  
9 Robert can give us (inaudible.)

10 COMMISSIONER BRANDT: We don't have it on the  
11 agenda.

12 MR. SIMMONS: I can come back next week.

13 COMMISSIONER BRANDT: He needs to (inaudible).

14 MR. SIMMONS: I do want that part in (inaudible)  
15 bid process as far as (inaudible.)

16 UNKNOWN PERSON: (Inaudible).

17 MS. HOLMAN: I don't understand why it would be  
18 (inaudible) our fuel surcharge and know that's how many  
19 gallons we use right now --

20 UNKNOWN PERSON: (Inaudible).

21 COMMISSIONER BRANDT: Okay. Well, let's put it  
22 on the agenda. We'll do that (inaudible.)

23 MR. MACGREGOR: (Inaudible).

24 COMMISSIONER BRANDT: Okay. Yeah. So we will  
25 continue the discussion in which we will have part of

1 it in executive session for Simmons. Is there any  
2 reason you folks would want to come in for executive  
3 session?

4 MS. HOLMAN: (Inaudible) bid process (inaudible).

5 COMMISSIONER BRANDT: We have to come out to  
6 really have discussions that are not proprietary.

7 MS. HOLMAN: Well, the fuel (inaudible) ours are  
8 --

9 MR. HOLMAN: As a proprietary if it's a bid he  
10 doesn't have yet. It's a bid. It's not his current  
11 numbers.

12 MS. HOLMAN: If you're facing.

13 MR. SIMMONS: It's still my current numbers on  
14 how I operate.

15 MR. HOLMAN: How much fuel (inaudible.)

16 MS. HOLMAN: Wait, it will be public knowledge if  
17 (inaudible.)

18 COMMISSIONER BRANDT: Address it to the attorney.

19 MS. HOLMAN: It's going to be public if he has to  
20 (inaudible.)

21 MR. SIMMONS: I have to turn the total in not how  
22 I came up with those numbers.

23 MR. HOLMAN: Isn't that what they're asking for  
24 is a total?

25 MR. SIMMONS: Yeah. They want to see how I came

1 up with them. If you want a total I'll give it to you.  
2 If you want to see how I came up with them I want that  
3 in executive session.  
4 COMMISSIONER CHMELIK: (Inaudible).  
5 MR. MACGREGOR: Personally I think that's  
6 (inaudible).  
7 UNKNOWN PERSON: (Inaudible.)  
8 MS. HOLMAN: (Inaudible).  
9 UNKNOWN PERSON: (Inaudible).  
10 COMMISSIONER CHMELIK: I agree.  
11 COMMISSIONER BRANDT: So we'll make part of it  
12 executive session (inaudible).  
13 MR. SIMMONS: Depends on how many questions you  
14 have.  
15 COMMISSIONER BRANDT: It will take -- if we come  
16 out in 10 minutes that's great but that's --  
17 UNKNOWN PERSON: Put it down for 30.  
18 (Inaudible).  
19 COMMISSIONER BRANDT: Yes.  
20 MR. SIMMONS: What time are you talking?  
21 COMMISSIONER BRANDT: It would be afternoon.  
22 We'll have to deal with Kathy. She'll be back  
23 tomorrow. I'm not sure what (inaudible). We'll try to  
24 schedule it at the end of the day again so we're not  
25 cut short -- got to get this anchored down. Okay, for

1 Walco, I just want to have -- get this clear in my  
2 head. The five percent per year flat charge that was  
3 just proposal.

4 MR. HOLMAN: We got (inaudible).

5 COMMISSIONER BRANDT: (Inaudible), okay. No  
6 adjustments for consolidation is that firm?

7 MS. HOLMAN: It wasn't at the time because we  
8 didn't know how the consolidation was going to work.  
9 We know our area, and it's tough to say. And we have a  
10 big concern like putting the one right outside of  
11 Riggins. We used to have ten there, and that's just  
12 one of -- it's just one of our big concerns that it  
13 might not be able to be just the four times a week  
14 (inaudible).

15 MR. HOLMAN: I would say that right now stands  
16 unless you give some different specs on that because if  
17 not it would be unknown for us.

18 COMMISSIONER BRANDT: And the recycling no  
19 adjustments, period?

20 MR. HOLMAN: No.

21 MS. HOLMAN: That's because (inaudible).

22 COMMISSIONER BRANDT: And reimbursement for  
23 consolidated sites is actual expenses, period?

24 MR. HOLMAN: Yes. So that's depending on how you  
25 guys want to do it just like it was last time. If you

1 want to do the dirt work then materials then all we  
2 would be doing is the cost of the labor and  
3 (inaudible.)

4 COMMISSIONER BRANDT: You are (inaudible). It's  
5 actual -- the way it's written the county will  
6 reimburse actual expenses.

7 MR. HOLMAN: Right. So if you guys pay for dirt  
8 work and the material that's your actual expense. Our  
9 actual expense is the labor to do it.

10 COMMISSIONER BRANDT: Okay.

11 MR. HOLMAN: We weren't sure how you were doing  
12 that because dirt work can cost -- we could be triple  
13 our amount on putting sites in.

14 COMMISSIONER BRANDT: Sure. Sure. Do the sites  
15 have to be -- okay. Any other questions of the  
16 commission? Kirk, anything else? Any other --

17 MR. MACGREGOR: Can't think of any.

18 COMMISSIONER BRANDT: -- enlightenment? Okay.

19 MR. HOLMAN: Sorry for the argument, everyone.  
20 Not against or (inaudible), Robert.

21 MR. SIMMONS: No, that's fine.

22 MR. HOLMAN: We just want to defend our case so  
23 we don't -- if we don't have this anymore we at least  
24 want to explain everything so you guys understand, so  
25 it makes us feel better anyway.

1 COMMISSIONER BRANDT: (Inaudible). We will have  
2 more discussions next week. Thank you, everybody.  
3 (Discussion regarding Sheriff's office flatbed trailer  
4 not transcribed.)  
5 MR. MACGREGOR: So five percent (inaudible.)  
6 COMMISSIONER BRANDT: And fuel (inaudible.)  
7 COMMISSIONER ROCKWELL: Just five percent.  
8 MR. MACGREGOR: Yeah, just (inaudible) fuel.  
9 Still seems like quite a bit. Cost of living include  
10 fuel (inaudible) CPI amounts?  
11 COMMISSIONER BRANDT: Not the way the current  
12 contract is or the new contract. (Inaudible) CPI  
13 that's where I was arguing because there's multiple  
14 CPIs out there for rural suburbia here, there,  
15 everywhere. One of them takes that into consideration,  
16 and one of them doesn't.  
17 MR. MACGREGOR: Yeah.  
18 COMMISSIONER BRANDT: But it is an industry that  
19 is heavily dependent on fuel so what might not affect  
20 other stuff.  
21 MR. MACGREGOR: (Inaudible). Did they say  
22 (inaudible) James, is the transfer station going to  
23 stay open if Simmons gets it?  
24 COMMISSIONER BRANDT: It will stay open but Walco  
25 will charge.

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1 MR. MACGREGOR: Charge, pickup load.  
2 COMMISSIONER BRANDT: Yeah.  
3 COMMISSIONER ROCKWELL: See, what will happen is  
4 it will go to the point of least resistance. So if  
5 they're not open on a Sunday (inaudible).  
6 MR. MACGREGOR: Okay. Yeah.  
7 COMMISSIONER ROCKWELL: So the garbage  
8 disappears.  
9 MR. MACGREGOR: Yeah.  
10 COMMISSIONER ROCKWELL: (Inaudible) people would  
11 only pay there in the event they didn't have any other  
12 options. The dumpsters are all options.  
13 MR. MACGREGOR: Yeah. I guess you figure how far  
14 you got to go is it worth the gas depending on what you  
15 have to pay (inaudible.)  
16 COMMISSIONER ROCKWELL: So, see, that's an  
17 interesting point, Mac. If you're in Riggins you're  
18 paying the bill for the county (inaudible) for that  
19 site. Neither do the people in Kooskia get any benefit  
20 from that site.  
21 MR. MACGREGOR: (Inaudible).  
22 COMMISSIONER ROCKWELL: So they're all paying so  
23 you and I have to (inaudible), but they're all using  
24 the dumpsters. We would just be (inaudible) 10,000  
25 people you have 20 percent of the population would

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1 start using dumpsters.

2 MR. MACGREGOR: But some different ones would be  
3 using Simmons' transfer station so it would balance out  
4 some.

5 COMMISSIONER ROCKWELL: Well, they also --  
6 some -- I mean, some people from here might go do  
7 Simmons' transfer station.

8 MR. MACGREGOR: Right.

9 UNKNOWN PERSON: (Inaudible.)

10 UNKNOWN PERSON: Transfer station (inaudible).

11 UNKNOWN PERSON: (Inaudible).

12 MR. MACGREGOR: Yeah.

13 COMMISSIONER BRANDT: It's more a convenience of  
14 an issue.

15 COMMISSIONER ROCKWELL: (Inaudible) make it more  
16 convenient to maybe 1,000 people to 2,000 people and  
17 less convenient for 3,000.

18 MR. MACGREGOR: Yeah.

19 COMMISSIONER BRANDT: And see there's another  
20 component that comes in here that I'm going to get beat  
21 up on, and that is that Simmons' contract and Simmons'  
22 land stay absolutely even, and we've had consolidated  
23 dumpster sites for three years now. The prairie that  
24 has convenient dumpster sites all over the place, their  
25 rates are going through the ceiling. So now can I

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1 support raising a fee, solid waste fee, on the Valley  
2 and everything stay the same, and they have to drive  
3 farther versus up here. It's -- and Grangeville, I  
4 mean --

5 COMMISSIONER CHMELIK: That's a no win situation.  
6 How do you spread the price of garbage (inaudible).  
7 It's like I was talking last night to somebody about it  
8 (inaudible). I mean, what do you do? That's what it  
9 is. I don't think it's fair, but in order to get  
10 something put together that (inaudible), pay a little  
11 bit more and some people want to pay a little bit less.  
12 They really do (inaudible) I don't know how you do it.  
13 If you were to try to police it like all these people  
14 that come in and want half off on this, and I'm not  
15 living there, we can't police all that. (Inaudible)  
16 police all that get paid another \$40,000. You're just  
17 policing (inaudible) to save \$20,000, still \$20,000 to  
18 (inaudible.)

19 COMMISSIONER BRANDT: And if it was just cost it  
20 would be a no brainer, but it's also (inaudible)  
21 consolidation aspects versus -- now we're (inaudible)  
22 consolidate up here.

23 COMMISSIONER CHMELIK: I don't think so. I think  
24 personally (inaudible).

25 COMMISSIONER BRANDT: But this makes it an issue.

1 COMMISSIONER CHMELIK: I understand that.  
2 COMMISSIONER BRANDT: How to gain \$230,000.  
3 COMMISSIONER CHMELIK: (Inaudible) what are you  
4 going to do? Those are the costs.  
5 COMMISSIONER BRANDT: Right, but now to  
6 consolidate you're looking at another 50 to \$100,000.  
7 COMMISSIONER CHMELIK: 50 to 100,000 to  
8 consolidate (inaudible.)  
9 MR. HOLMAN: The joys of living in Idaho County.  
10 Everybody thinks it's cheap.  
11 COMMISSIONER BRANDT: Joys of managing.  
12 COMMISSIONER CHMELIK: That's what we ran for.  
13 COMMISSIONER BRANDT: Yeah.  
14 COMMISSIONER ROCKWELL: Clearly (inaudible) but  
15 that's not our problem. So they've been doing it for  
16 60,000 and couldn't do it for 60,000, okay. That's not  
17 our problem. But it's good that it went out to bid  
18 (inaudible.)  
19 COMMISSIONER CHMELIK: (Inaudible) transfer  
20 station up here.  
21 COMMISSIONER BRANDT: But what is Robert Simmons'  
22 cost running all of his rigs out of Kamiah up here?  
23 And he can do that for 77?  
24 COMMISSIONER ROCKWELL: Also looking at  
25 (inaudible) you know, there's going to be more forward

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1 thinking (inaudible).  
2 COMMISSIONER BRANDT: Right.  
3 COMMISSIONER ROCKWELL: Just becoming -- thinking  
4 competitively (inaudible).  
5 COMMISSIONER BRANDT: Right. But his bid is  
6 right now as it stands is exactly what Walco has.  
7 COMMISSIONER ROCKWELL: Not true.  
8 COMMISSIONER BRANDT: Not true?  
9 COMMISSIONER ROCKWELL: No, that's not true.  
10 Walco said that Simmons (inaudible.) Simmons said he's  
11 different by 6,000 bucks. Simmons said he's cheaper by  
12 6,000 bucks.  
13 COMMISSIONER BRANDT: Because of fuel.  
14 COMMISSIONER ROCKWELL: Walco said their fuel is  
15 going to be one number. Simmons said I think it's  
16 going to be another (inaudible). \$50,000 a year  
17 cheaper than Walco at this second.  
18 COMMISSIONER BRANDT: Right. Right. So if he is  
19 that much cheaper per year why can't Walco do the same  
20 thing sitting right here?  
21 COMMISSIONER ROCKWELL: True.  
22 MR. MACGREGOR: (Inaudible).  
23 COMMISSIONER BRANDT: Right. I know, but that's  
24 my only hangup here is that -- not hangup, but I just  
25 can't get my arms around it because if Simmons can do

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1 it for \$77,000 plus the fuel surcharge out of Kamiah  
2 why can't Walco do it --

3 COMMISSIONER ROCKWELL: You got a good point.

4 COMMISSIONER BRANDT: -- for at least less money.

5 COMMISSIONER ROCKWELL: And as they said, we've  
6 been doing this for 40 years. We know our numbers.  
7 Well, their number three months ago was \$62,000. So if  
8 you know your number over 40 years (inaudible).

9 COMMISSIONER BRANDT: Well, and then I was even  
10 going through my notes, and their old contract prior to  
11 arbitration the magic number was (inaudible). In 2006  
12 again prior to arbitration their amount was 53. 539  
13 (inaudible).

14 COMMISSIONER CHMELIK: (Inaudible).

15 COMMISSIONER ROCKWELL: That was a good solid  
16 number with a profit of 53.

17 COMMISSIONER CHMELIK: Well, no. It was  
18 negotiated.

19 COMMISSIONER ROCKWELL: (Inaudible.)

20 COMMISSIONER CHMELIK: That was through  
21 arbitration with the Judge, correct?

22 COMMISSIONER BRANDT: Right.

23 MR. MACGREGOR: Just how long ago?

24 COMMISSIONER ROCKWELL: (Inaudible.)

25 MR. MACGREGOR: It was that long ago?

1 COMMISSIONER BRANDT: It was done before I got on  
2 in 2007.

3 MR. MACGREGOR: Really?

4 COMMISSIONER BRANDT: Yeah. Okay we're  
5 adjourned.

6 (End of second recorded segment.)

7 COMMISSIONER BRANDT: Okay, Commissioners, we're  
8 back to talking trash, and where we left it is Simmons  
9 was going to visit about -- with us about -- Mr.  
10 Simmons was going to visit about the additional cost  
11 and fuel-age, tonnage, or anything that he would like  
12 to share. We've opted not to go into executive session  
13 so it's whatever you want to give us in opening.

14 MR. SIMMONS: That's fine. I feel that -- just  
15 like our fuel surcharge, but I put it to the month.  
16 Okay, what I did was I figured out a monthly total for  
17 MSW of what we're averaging 4500 tons a year is what we  
18 figured in our proposal. Took it straight off of what  
19 we do on our regular fuel surcharge 27 tons per load,  
20 and then our long-haul gallons are 80 gallons per load  
21 that's what KBC figures in their loads. And then total  
22 gallons a week for the collection and total per month  
23 for collection. Today's fuel price is 4.259. I didn't  
24 do an average because I just -- today's fuel price is  
25 4.259. Our starting price is 259. You can see the

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1 difference is 1.669. It comes out to the final two  
2 down below 1853.25 and 3276.24 for a total of 5,129.49,  
3 which would bring our total of 77,202 to 82,331.49.  
4 That is what a possible fuel surcharge would look like.  
5 That's a monthly charge, not a quarterly. I broke it  
6 out per month because I didn't want to get it so  
7 confusing of going quarterly back to monthly. Usually  
8 we give you on the quarter so --

9 COMMISSIONER BRANDT: (Inaudible) annual to  
10 quarter to (inaudible) all sorts of numbers.

11 MS. HOLMAN: (Inaudible) modified or unmodified  
12 (inaudible.)

13 MR. SIMMONS: This is for the system that we  
14 proposed to -- on the proposal with the service that  
15 was being provided right now (inaudible).

16 COMMISSIONER BRANDT: Existing (inaudible).

17 MS. HOLMAN: (Inaudible) Kamiah (inaudible).

18 MR. SIMMONS: This is straight off of GPS from  
19 stop to stop to back up.

20 COMMISSIONER BRANDT: (Inaudible.) This is what  
21 I've been crunching, which trying to get to apples to  
22 apples, and we started out with what I looked at is I'm  
23 trying -- I still haven't figured out that the  
24 justification for Marietta and Patrick's realm of the  
25 87,000 a month that huge increase literally 52 percent



1 from where the contract started in 2002. In 2002, only  
2 10 years ago, the base contract at that time was  
3 35,180. Then you went through arbitration, wasn't  
4 making it, and that's -- you know, you can see that  
5 there that there's substantial amount, and so in 2006 a  
6 new contract was signed in 2008, and it jumped up to  
7 53794, and then when you add on the CPIs to the current  
8 amount base of 60,823.35, then going back with your --  
9 I put a note in the bottom using your six quarters  
10 (inaudible) fuel surcharge reports, year and a half,  
11 breaking that down was about 3,386 per month of the  
12 fuel surcharge, which gets it up to 64209, and I'm  
13 trying to get to -- since that 87 included the fuel I'm  
14 trying to zero that out. I left out appliances because  
15 that's still -- you can still have that additional  
16 component in what you guys sent us. So, again, going  
17 from that 64 to 87 I'm just lost.

18 MR. SIMMONS: I'll try to --

19 MS. HOLMAN: I did some quick math. If you take  
20 what Simmons gets per ton for his area what he's  
21 hauling and how much he's paying he gets \$215 a ton.  
22 We get 168. You take 215 times our tonnage you get  
23 (inaudible) you know, a lot for the fact that we're  
24 running the transfer station and everything on top of  
25 it. So, I mean, if you want to do apples to apples

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1 that would be (inaudible.)

2 MR. HOLMAN: And I'll also give a -- when we went  
3 through the binding arbitration we actually -- I don't  
4 think any of you were here then. You were just coming  
5 in at the end.

6 COMMISSIONER BRANDT: Yeah.

7 MR. HOLMAN: We actually said we need to come in  
8 and prove our numbers, and if we can prove what we're  
9 doing they'll -- that's what we'll get a month. I  
10 think we were actually at -- what did we get that time?

11 MS. HOLMAN: That time we asked for 96,000.

12 MR. HOLMAN: Yeah, 96,000 seven years ago. The  
13 binding arbitration he said, nope, we're going to go  
14 with this. We weren't happy with it at that time, but  
15 we agreed to binding arbitration so we went through  
16 with that. Since that arbitration there's a few sites  
17 that have come out and whatnot. Riggins kind of  
18 changed. There's some things that changed. So when we  
19 went to bid this we came down off that quite a bit from  
20 where we wanted to be. One of the reasons we're up  
21 from where the 60 was is when we first started talking  
22 about this I think a year and a half, two years ago, we  
23 were under the assumption we're going to be doing what  
24 Robert did in his area was consolidation, separation,  
25 and getting things out so we could finally get that --

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1 what we're hauling down and possibly get that number  
2 closer to. Because the way both of our companies I'm  
3 sure work we make money from different areas. We try  
4 to keep a whole area. There are some contracts that  
5 are better than others, other contracts that aren't as  
6 good. Idaho County is turning into one that's really  
7 starting to drag all our profit from our other towns  
8 out, which as far as I'm concerned you can probably see  
9 just from two numbers that are fairly close. When we  
10 got away from going towards figuring out the  
11 consolidation and going that route and, I'm sorry, but  
12 all we could see was a price reduction with the -- the  
13 other item added on. We didn't see any way we could  
14 possibly get towards getting (inaudible.)

15 COMMISSIONER ROCKWELL: (Inaudible).

16 MR. HOLMAN: Putting recycling on and (inaudible)  
17 was actually -- that's a reduction in pay is is what it  
18 is, and so we didn't see any way we could possibly get  
19 any more money out of that so --

20 COMMISSIONER BRANDT: But you've never agreed to  
21 go there -- go new to the recycling.

22 MR. HOLMAN: We've never agreed to go to the  
23 recycling, that's correct.

24 COMMISSIONER BRANDT: Right. So that's not added  
25 on (inaudible.)

1 MS. HOLMAN: (Inaudible).  
2 MR. HOLMAN: Say that again.  
3 COMMISSIONER BRANDT: Well, the 87 your proposal  
4 doesn't include that.  
5 MR. HOLMAN: Right, because --  
6 MS. HOLMAN: It has a lot of legal issues  
7 (inaudible).  
8 COMMISSIONER BRANDT: Right, and I'm just trying  
9 to (inaudible).  
10 MR. HOLMAN: It includes it that we as we've  
11 always talked every time we've come in when they're  
12 (inaudible) recycling is we wanted to reserve the right  
13 to still recycle because it has to be something we can  
14 be allowed to do.  
15 COMMISSIONER BRANDT: So you're just adding in  
16 there a cost for recycling for you guys to (inaudible.)  
17 MR. HOLMAN: It's a cost if we have to pay  
18 someone to recycle in -- maybe I'm not understanding  
19 what you're saying.  
20 COMMISSIONER BRANDT: I'm trying to get to the  
21 \$87,000. I'm trying to get there from --  
22 MS. HOLMAN: If you want to go to (inaudible)  
23 Lewiston pays (inaudible.)  
24 COMMISSIONER BRANDT: I'm really wanting to go  
25 off of your guys' numbers because my big concern, and

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1 if you're -- if I was running a company that was  
2 running in the hole 35 percent actually losing \$273,000  
3 a year you have to have a lot of slush or reserve in  
4 order to -- that's the difference. Am I missing  
5 something there?

6 MS. HOLMAN: Well, you're taking it on -- just  
7 saying that Rob was going to make -- that we were  
8 losing \$27,000. That's (inaudible).

9 COMMISSIONER BRANDT: 22,000.

10 MS. HOLMAN: Yes. That's to bid a contract for  
11 what we're doing now. If you consider what we do at  
12 the transfer station, you know, granted it's not, you  
13 know, high up in that numbers, but if (inaudible) which  
14 is a diversion and recycling, so to speak, you know,  
15 taking a waste stream out that we're not having to pay  
16 to ship. See, when a system the way it's set up is  
17 that we don't get anymore money for tonnage, and so if  
18 we don't open the transfer station and leave it open  
19 and allow people to dump out there for free, then it  
20 goes out to the dumpsters and we're hit with  
21 (inaudible). So we have to take into account running  
22 that transfer station, the trucks, the equipment,  
23 everything involved. I mean, we need new dumpsters out  
24 there. You know, we have a lot of things that we  
25 haven't been able to do over the years that, you know,

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1 it does take to run this company. When you have two  
2 bids side by side that are basically the same number I  
3 don't -- yes, I mean, we obviously don't want to take  
4 the hit anymore. We want to make money on this.

5 MR. HOLMAN: At the time as a whole we're  
6 squeaking by when we were looking at it for 60. We saw  
7 the potential of the consolidated sites. We're at that  
8 point we can't take on a ten year contract for that  
9 type of --

10 MS. HOLMAN: (Inaudible), I mean, we can't take  
11 on (inaudible).

12 MR. HOLMAN: There's some things I can't  
13 technically say on how things have been run, and it has  
14 to do with how loads are run and different things like  
15 that. We decided we're not going to take that risk on  
16 ourself anymore and not get paid. We needed -- I'll  
17 just say it. The trucks, I mean, I don't know if  
18 Robert has this planned in, and nothing against you if  
19 you don't know, but the Salmon River is a son of gun  
20 and Elk City is a son of a gun and the prairie is. Our  
21 trucks are overloaded almost all the time. They're  
22 over legal. You can't get -- you can't get enough on  
23 without doing a second trip on everything. It's just  
24 how it is. We haul back -- we're 60 to 65 a lot of  
25 times in the summer coming back from Riggins. We can't

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1 go over 52. But what happens is we get containers full  
2 of concrete and stuff and all of the sudden we're  
3 overloaded. We can't take that risk on anymore. This  
4 is one of the things that was an issue back seven years  
5 ago why we had to add two more routes, and it's getting  
6 out of hand. When we saw the possibility of doing some  
7 consolidation we thought maybe, just maybe, we can get  
8 where that tonnage starts coming back down, that won't  
9 be a problem. What we're seeing is without some sort  
10 of regulation on those sites just putting up sites with  
11 cages is great. I like the idea. I like what Robert  
12 has done, you know, we designed it a little bit  
13 together, figured some of this. But if we don't have  
14 some sort of stop to it or people knowing they can't do  
15 it we can't get under that tonnage mark, and we --  
16 there's scales down there we have to go through every  
17 day of the week, and it's going to take -- we're going  
18 to take a risk and all the sudden it just takes -- you  
19 know, last week was a DOT check week. We got nailed  
20 for being a thousand over. They let us off with a  
21 warning, but if that goes to something you have to do.

22 MS. HOLMAN: (Inaudible).

23 MR. HOLMAN: So it's something we don't really  
24 like to talk about because it's been a benefit to the  
25 county by us running those overloads, but we just can't

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1 plan on that anymore so --

2 COMMISSIONER BRANDT: During arbitration you said

3 you asked for 97?

4 MR. HOLMAN: 96.

5 COMMISSIONER BRANDT: 96. Right now, to be

6 frank, what arguing with myself here, is that over 10

7 years it's been going like this (inaudible) then, you

8 know, now it's 87; but, again, what seven years ago you

9 wanted 96 so --

10 MR. HOLMAN: Can I ask why we're being

11 scrutinized and another bid that came in similar?

12 COMMISSIONER BRANDT: I'm going to get to there,

13 but I'm just trying to focus on yours, and then I'm

14 going to go to Robert's.

15 MR. HOLMAN: Okay.

16 COMMISSIONER BRANDT: I want to get some comfort.

17 Right now I don't have comfort. If we were to accept

18 yours and next year or the year after that are we going

19 to get drug into arbitration for that 96 again?

20 MR. HOLMAN: (Inaudible.)

21 COMMISSIONER BRANDT: I don't hear any

22 consistency of --

23 MR. HOLMAN: That is the whole reason we said

24 let's put it out to bid is because we needed to have

25 something that's solid, and there's no more questions.



1 And this is it, our number. That's all we can ask for  
2 unless some sort tonnage develops that is just out of  
3 control and we're hauling more the contract covers it.

4 MS. HOLMAN: The contract before the one that we  
5 had didn't cover any of that. It didn't allow for it,  
6 and that's where we ended up butting heads and having  
7 to go into arbitration because it wasn't defined, and  
8 that's why the contract that you guys are using is  
9 basically what us and Dennis Albers and our attorney  
10 wrote to make sure everything was covered no matter  
11 what happened in the future that it wouldn't end up in  
12 something where, you know, somebody was just going to  
13 get more money because --

14 COMMISSIONER BRANDT: Okay. Just one last  
15 question. As of the first of the year when you guys  
16 came in with your proposal that you asked to have  
17 pulled it was for that 60 some thousand. So up until  
18 you gave us this new proposal I never heard you guys  
19 ask for more money.

20 MR. HOLMAN: We didn't.

21 MS. HOLMAN: We never got that far.

22 MR. HOLMAN: We never got that far.

23 MS. HOLMAN: We were stuck on recycling, and we  
24 were told (inaudible).

25 COMMISSIONER BRANDT: Marietta, you guys brought

1 us in a proposal --

2 MR. HOLMAN: Right.

3 COMMISSIONER BRANDT: -- ready for our signature.

4 MR. HOLMAN: Without recycling.

5 COMMISSIONER BRANDT: If we would have signed it  
6 right there and then you could have survived on that  
7 \$60,000 base.

8 MR. HOLMAN: We thought we saw some potential to  
9 start getting square. I don't know how to explain this  
10 any different. We were starting into consolidation,  
11 and we saw that as a possibility of being able to get  
12 it where the tonnage is down. We didn't work towards  
13 that at all. We did a hard look at all the numbers and  
14 said, do we need to be taking this much risk on just to  
15 keep the area. And then we really got to looking at it  
16 we said, you know what, we are actually not making  
17 money on this contract. So let's say we lost all of  
18 our cities and other counties and towns and we had just  
19 this contract we would definitely have to try to falter  
20 out of it at that price. So, you know, there's a lot  
21 of looking at it and a lot of different things we had  
22 to come up with and see should we even be going for it  
23 at this.

24 MS. HOLMAN: And we also took a look at  
25 (inaudible) didn't realize (inaudible) that much money.

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1 We were going to come in and ask you guys for \$27,000.  
2 It's going to put you in a situation where you're going  
3 to have our number, and more than likely the fair thing  
4 to do for Idaho County residents was to put it out to  
5 bid to make sure that we weren't just coming and  
6 holding you over a barrel at 27,000 more a month. So  
7 we figured, okay, but if there was a possibility that  
8 somebody could do it better than us, you know, for that  
9 price then you guys have that right also. So it wasn't  
10 something that, you know, that we didn't take a hard  
11 look at and honestly was a little bit of a saving grace  
12 that, you know, we didn't sign it back then because  
13 (inaudible) what the risk we were taking with the  
14 overloaded trucks and the tonnage, but we do  
15 (inaudible).

16 MR. HOLMAN: That's the only reason we chose to  
17 put it out to bid is because we didn't see any way we  
18 were going to get more money, and we saw it as a way  
19 that everyone could be square and fair be us getting it  
20 or someone else. That's what the bid process is for  
21 is -- it's fair.

22 COMMISSIONER BRANDT: Okay. I just note for the  
23 Commission is that Simmons component where Simmons put  
24 a cap of 4,500 tons a year. I averaged out in using  
25 the same six quarter reports from Walco (inaudible)

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1 year and a half, and it does show that they had over  
2 done that time and averaged out at 4,630, and I believe  
3 Robert you gave us a price of \$74 a ton?

4 MR. SIMMONS: 75.06.

5 COMMISSIONER BRANDT: So it's 75.06 per ton so  
6 we're \$900. 75.06 times 20, 30 -- 32 divided by 12.

7 MR. HOLMAN: 815.50.

8 COMMISSIONER BRANDT: Okay. So (inaudible) we  
9 have (inaudible) in front of us there. My numbers  
10 Simmons comes in (inaudible) Walco has. The difficulty  
11 is the lack of (inaudible). Robert, you want to  
12 address that?

13 MR. SIMMONS: In the proposal we've put in that,  
14 of course, our transfer station that's what where we  
15 will be hauling. It will be open. We do have people  
16 coming down from the prairie to come down to ours. As  
17 I'm sure people from our side (inaudible) Patrick and  
18 Marietta's. We did not put anything in there at this  
19 point in time for a disposal site up here as far as a  
20 transfer station. It's been a hard number to throw in  
21 right away. We have possibly thought about what we  
22 could be doing for possible stations not only in  
23 Grangeville -- or Grangeville area, but Cottonwood, Elk  
24 City, and Riggins. I said in the first of the meeting  
25 last week I said that we feel it down in our area we're

1 still ten years behind even though we put in the new  
2 sites. We want to be looking at putting in a mini  
3 dropoff station in the Kooskia area to lessen the route  
4 times we are out on the trucks in the event (inaudible)  
5 consolidated sites. That's the same thing that we'd be  
6 looking at here is bring in so that -- to alleviate the  
7 pressure off of those dumpsters to bring in bulky  
8 waste, non-MSW, that type of thing so the dumpsters are  
9 strictly used for garbage. I did not figure that into  
10 this price at this time. I figured that the majority  
11 of the time Cottonwood -- you know, it's a lot of  
12 mileage to drive all the way to Grangeville from  
13 Cottonwood (inaudible). And I kind of -- we had the  
14 feeling that from Riggins to Elk City to Cottonwood,  
15 Ferdinand, Greencreek area. They're probably seeing  
16 that all in their dumpsters. So the only place that  
17 you're looking at possibly is the Grangeville area, and  
18 that is one thing if this proposal was chosen we would  
19 have to discuss in the negotiations. What we could do  
20 with that, shave some dumpsters off in other areas to  
21 save the transport time and to put a site up here that  
22 we could be running roll offs or a trailer out of to  
23 alleviate (inaudible). And when we continue to work in  
24 looking at Cottonwood area, Riggins area, Elk City  
25 area. And personally the more trucks we get off the

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1 road (inaudible) saving money in the end.

2 MR. HOLMAN: Essentially we're offering a system  
3 that you can have everything and anything in any  
4 dumpster location that's out there, and we'll take it  
5 without --

6 MS. HOLMAN: I think we're kind of just, first  
7 off, almost kind of the bid process is supposed to be  
8 fair and unbiased, no discrimination, that kind of  
9 stuff. I think last week we were (inaudible) we have  
10 that. The bids if there was more information that you  
11 guys (inaudible) were supposed to preliminary open them  
12 and ask so that we can't -- basically it's hard for us  
13 not to want to massage that number, and it's probably  
14 hard for Robert not to want to massage his number to  
15 make it fit where you guys want, plus telling you more  
16 on (inaudible) there was one sheet saying you're going  
17 to add things. It's created a whole unfair bid process  
18 because now we're basically battling with each other  
19 when the whole fair bid process is look at the best bid  
20 provided for what you asked for. And what you asked  
21 for was the transfer station, to follow the ordinances,  
22 things spelled out, and we addressed it, and I think a  
23 continuation any more is just unfair to both of us at  
24 this point.

25 COMMISSIONER ROCKWELL: Why do you think it's

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1   biased, Marietta? I'm responding (inaudible) Charney's  
2   letter.

3           MS. HOLMAN: Biased because you at the last  
4   meeting -- well, actually Monday you wanted to  
5   (inaudible) and not only follow that Tuesday  
6   (inaudible) you wanted an incomplete, but allowed  
7   Robert to continue to add and modify anything that he  
8   had towards his even though you deemed his to be the  
9   complete bid. If you didn't care for our bid or  
10   anything or you needed clarification or we were missing  
11   something as you deemed it was incomplete, then we  
12   should have got the same (inaudible) but we were not.  
13   We were told we're just going to set it off to the  
14   side. You're incomplete, and Robert's is complete.  
15   But yet we continued to have to ask questions about the  
16   transfer station, price per ton, and so from that  
17   point -- even from that point the fair bid process was  
18   out the door because he knew our number. We knew his  
19   number, and we both -- I mean, it's just pretty obvious  
20   that we're both battling for a contract, but it's not  
21   fair to either one of us and --

22           COMMISSIONER ROCKWELL: One of the things that  
23   you have to do with a bid, just from an instructional  
24   sort of standpoint, is the bids are made, then there  
25   are differences. There are discrepancies. There are

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1 different ways to (inaudible) so then you discuss  
2 those. That's what this board is required to do so we  
3 try to discuss those.

4 MS. HOLMAN: (Inaudible).

5 COMMISSIONER ROCKWELL: Things like we said, did  
6 you have an allocation for recycling, and you said, no.  
7 It's not a bias. It's just that's one of the things  
8 that was in our bid request. So I'm just pointing that  
9 out. It's something we have to do. And then Robert, I  
10 asked (inaudible.)

11 MS. HOLMAN: That was all supposed to be done  
12 prior to a public meeting. Because it says you  
13 preliminarily will open that and review and anything  
14 that you deem clarification or admissions are supposed  
15 to be done so neither one of us can have the knowledge  
16 to try to (inaudible) because it isn't fair for him to  
17 (inaudible) not be recycled. And him say, oh, I'm  
18 going to be -- we're going to do recycling.

19 COMMISSIONER BRANDT: Marietta, though, I don't  
20 know how far to go. The reality is is that you guys  
21 wanted to -- like last week when we were discussing  
22 this. You guys wanted to come into executive session  
23 and talk. Robert basically asked for one. But your  
24 now your attorney says, no, you should have no  
25 executive sessions; it should all be done in the light



1 of day. So now here we are. We're laying all the  
2 cards on the table.

3 MR. HOLMAN: Understand from our point he has a  
4 bid that doesn't have the whole numbers there. He  
5 knows our number. Nothing against Robert. I'm going  
6 to guess he did it upstanding, but I'm going to say how  
7 our concern, he knows exactly where we're at because we  
8 had every number in our bid. He didn't provide gallons  
9 with his bid, none. So his bid is a big unknown that  
10 he can make those gallons whatever he wants right now.  
11 He can say right now, you know what, I think it's going  
12 to take me 10-gallons to do Idaho County. He can make  
13 that whatever he wants. So our number is a complete  
14 can't move from there, and he can do whatever he wants  
15 with his. That's kind of the difficult part.

16 COMMISSIONER BRANDT: (Inaudible), No. 1. No. 2,  
17 if you look on here I actually called Marietta back  
18 after the meeting to confirm what she was talking  
19 about, because I was again getting stuck on monthly,  
20 quarterly (inaudible.) So in this I have her 79,000 --  
21 or 7900, excuse me.

22 MS. HOLMAN: What Dennis is saying in the letter  
23 is that aside from not going (inaudible) correct. It's  
24 like he was saying on all accounts that when you  
25 have -- this is what you have to go off of. You have

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1 this sheet and the other one. You guys had the right  
2 to ask all the additional questions but not in the  
3 (inaudible) of us or somebody else because that had to  
4 be done prior to giving out information so that this  
5 couldn't happen, the massaging or, you know,  
6 discrepancies like, you know, I might not agree with  
7 Robert's numbers, whatnot, but that's what he gave you  
8 prior to this then that's what it would be going off  
9 of. Like if you guys would have opened up on Friday  
10 and said, okay, Robert's is -- I don't think he might  
11 not have done this. You could have sent a request to  
12 him, got all that information without us knowing his  
13 number. And say you didn't like something in ours and  
14 you could have sent the same thing so it's fair. This  
15 is -- what Dennis is saying is that we've gone beyond  
16 fair.

17 COMMISSIONER BRANDT: Beyond fair, absolutely.

18 MS. HOLMAN: Yes.

19 COMMISSIONER BRANDT: If we negotiate with Robert  
20 off to the side then we negotiate with you. You never  
21 know what we talked about with Robert. So we aired it  
22 all out right here to be as fair as --

23 MS. HOLMAN: No, it had to be before the numbers  
24 were presented.

25 MR. MACGREGOR: No, that's not true. After the

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1 proposals come in I'm looking at the evaluation -- you  
2 can't evaluate a proposal until it comes in.

3 MS. HOLMAN: Right.

4 MR. MACGREGOR: So once they come in -- if you  
5 look at No. 2, County may conduct interviews to discuss  
6 or clarify aspects of proposals.

7 MS. HOLMAN: But that's prior to us knowing the  
8 number. It says, preliminarily open, and then review  
9 for responsiveness and completeness of the county and  
10 the divisors, and then it's a discrepancy. It's a  
11 whole thing. You guys are allowed to open them before  
12 you open them in public, because otherwise you're  
13 allowing all of us to know everybody's numbers.

14 MR. MACGREGOR: All these are just  
15 recommendations, too. I mean, we are not bound -- if  
16 you notice I think it says, may. We may follow these  
17 procedures. That's one thing I wanted to point out.  
18 It's a guideline.

19 MR. HOLMAN: I'll give an example. He's  
20 completed his bid and that's great. We have yet been  
21 asked, okay, would you guys like to put your bid into  
22 our format where we could say, okay, at 87,000 that was  
23 all you're going to pay for fuel. If you want it in  
24 your format we should then be allowed to say, okay,  
25 well, we are \$6,000 a month we had figured in there for

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1 fuel with what we had, and we should say, okay, our bid  
2 right now drops 6,000 to 81,000, and we should be able  
3 to say, and if we don't have to have a transfer station  
4 option or something we're figuring it cost us this much  
5 a month and we can say our bid is at 86,000 -- 76,000 a  
6 month. It can be played both ways right there. We  
7 could come in right below his number, and as Rockwell  
8 had said last week -- Mr. Rockwell had said is off  
9 apparent low bidder. Well, if we can put our number as  
10 apparent low bidder and you go into negotiations with  
11 us, then that's what we should do. We should be able  
12 to change ours, have the lower number, and go into  
13 negotiations. That's what we're getting at is it's  
14 kind of put us at a --

15 MS. HOLMAN: Right now we can say, okay, well,  
16 maybe 87,000 -- maybe we could do 82,000. We could do  
17 that. Now we're just kind of lobbying back and forth,  
18 and it's -- it's created an unfair bid process.

19 COMMISSIONER ROCKWELL: I can tell you, Patrick,  
20 that if your bid was 76,000 and the extras in your bid,  
21 that I would have said I would suggest we sit down with  
22 Walco as the apparent low bidder and flush out the  
23 contract to see if they are, and then said -- that's  
24 what I would be saying. Or if you were at 76  
25 (inaudible) or 87 apparent high bidder (inaudible.)

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1 MR. HOLMAN: He made a special point to say  
2 several times you didn't have to go with the low bidder  
3 so I don't think that was a criteria.

4 COMMISSIONER ROCKWELL: Your lawyer actually said  
5 many times you need to go with the low bidder. So I'm  
6 just taking the number 87 versus 77. I have a  
7 fiduciary responsibility to the citizens to look at the  
8 low number first, especially if it's responsive and  
9 it's a contractor who can do this business. And I for  
10 one know that Simmons can. I also know that you do. I  
11 know you do a great job. I wasn't looking at that.  
12 I'm simply looking at these.

13 MS. HOLMAN: But it also says it has to be -- you  
14 guys set out criteria in here that you say it will be  
15 based on, and that's providing all the past records,  
16 information and that kind of stuff, the safety surface.  
17 But when you get to the cost (inaudible) at the very  
18 end you guys asked for both systems, the modified and  
19 the unmodified. Simmons didn't provide that either.  
20 So there's a lot of things that are missing from his  
21 bid that, you know, you have to understand that we're  
22 looking at as we completed everything that was asked.

23 MR. HOLMAN: He's apparent low bidder because he  
24 got to leave things out of it.

25 MS. HOLMAN: And you guys said that you wanted

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1 cost of services provided. Cost of service is fuel and  
2 surcharge is included in that. Price per ton over the  
3 top should have been included. Everything should have  
4 been included. See you're allowing omissions and when  
5 they should have been strung out, but he's had a whole  
6 week to look at and play with the numbers. I don't  
7 agree with the fuel, but that's my personal thing that,  
8 you know, I think shoots his price above ours. So, you  
9 know, if it's something that you wanted them in this  
10 square format or the same format it should have been  
11 specified in the bid proposal that you want  
12 (inaudible). We want the fuel surcharge. We want, you  
13 know, price per ton if you're going to have it over  
14 this much this, this, this, and this, but that's not  
15 what was asked.

16 COMMISSIONER ROCKWELL: Did we do that, Kirk, in  
17 the fuel? I thought we asked for a specific  
18 (inaudible).

19 MR. MACGREGOR: We made a copy basically of  
20 Simmons' contract and said that's what we expect.

21 MS. HOLMAN: Well, no. When you read the first  
22 paragraph it says --

23 MR. MACGREGOR: Where are you at, Marietta?

24 MS. HOLMAN: The proposal specifications. The  
25 first paragraph the second thing it says, an operation

1 plan to be prepared by the contractor and approved and  
2 adopted by the county in compliance with the county  
3 ordinances. We provided you that. We did the whole  
4 contract the way we saw it to be fit and would work for  
5 us. Nothing in here specifies that you have to provide  
6 it (inaudible) fuel surcharge. Nothing says that you  
7 have to provide -- that you'll do the CPI. (Inaudible)  
8 contractor, which we did. When we shared all the  
9 things that we said we're willing, you know, to do and  
10 the only --

11 MR. HOLMAN: We only tried to do it to simplify  
12 it. It wasn't to try to --

13 MS. HOLMAN: And the only specification you guys  
14 technically really asked for was a disposal sites going  
15 from 34 to 8 to 12. The contract, yeah, it says  
16 (inaudible) the specifications on the bottom of it, but  
17 it doesn't say please abide by everything in the  
18 contract provided. It says, if you want to get an  
19 extra one from the -- the previous one from the county  
20 you can. And so --

21 MR. HOLMAN: I guess all we're getting at is we  
22 tried to answer it the best we could for what you were  
23 asking so it covered. Eight to 12 sites there's a big  
24 difference between 8 to 12. There's a difference in  
25 fuel used. So we tried to make a simplified version

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1 that I didn't realize was going to throw or put our bid  
2 as the --

3 MS. HOLMAN: There is no specific thing that  
4 says, you know, cost of service. We said, okay, our  
5 cost of service 86,000 (inaudible) modified or  
6 unmodified, you know, until (inaudible) if there's a  
7 savings but --

8 COMMISSIONER ROCKWELL: How about this, then.  
9 One of the things that I looked at with the CPI -- what  
10 you have right now is a surcharge and a CPI. The CPI  
11 can go two percent. The surcharge can go the other  
12 way, as you well know. Fuel is at four and a quarter.  
13 We could easily be at two bucks in a year. If that  
14 happens then in my mind I was looking at it as a cost.  
15 So when I put the cost down I know I've got a  
16 five percent increase with your contract per year. So  
17 on a million bucks we're looking at a \$50,000 increase.  
18 But the other contractor who bid it was at CPI plus a  
19 surcharge. If fuel were to go down -- back down to  
20 three and a quarter, for instance, then we'd just be  
21 looking at a CPI and right now it's two percent. So we  
22 would have a 20 percent increase the second year, and  
23 then there's an increase on that each year. So I look  
24 at it as a guaranteed five percent per year no matter  
25 what, and the other contractor was CPI plus a

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1 surcharge, which is (inaudible.)

2 MS. HOLMAN: You also have the tonnage cap, which  
3 the tonnage cap adds like four different aspects. Say  
4 right now -- I'll just say fuel is five. We can  
5 speculate it's going to go down, but if it goes up ours  
6 is figured at \$4. So if it goes up to five we're still  
7 covering -- or six or what we're covered in that 87.  
8 But if you want to (inaudible) were willing to do that.  
9 But that was the thing it was just ours was looked at  
10 as --

11 MR. HOLMAN: Another thing I want to say is I  
12 agree with what you're saying. We actually struggled  
13 with that trying to figure out how the way your specs  
14 were. The other way to look at that is fuel could  
15 easily go up to \$5 a gallon and you could get a  
16 six percent cost of living every year because  
17 inflation.

18 COMMISSIONER ROCKWELL: It's never happened  
19 historically. It's possible. (Inaudible.)

20 MR. HOLMAN: It could. I'm saying it could. We  
21 were trying to give a solid number that honestly didn't  
22 realize that both these bids were going to be neck and  
23 neck. I don't honestly know what to say with that.

24 COMMISSIONER ROCKWELL: I was shocked (inaudible)  
25 five percent. Nobody does that anywhere for any

1 reason. Three percent is the standard number that you  
2 use if (inaudible.)

3 MR. HOLMAN: You shouldn't say that. It's a  
4 pretty standard thing in a lot of garbage contracts  
5 around here.

6 COMMISSIONER ROCKWELL: (Inaudible.)

7 MS. HOLMAN: Riggins is doing -- this year is  
8 doing a ten, a ten, a eight and a five and a five. And  
9 Lewiston, I think, there's is --

10 MR. HOLMAN: (Inaudible) the same. I don't think  
11 they've done anything yet, but there's a lot of  
12 contracts are five percent a year.

13 COMMISSIONER ROCKWELL: Well, at five percent,  
14 you know, if you compound five percent over ten years  
15 you're talking about 70 percent guaranteed increase and  
16 it compounds. So when I was looking at the numbers  
17 those are huge numbers. I get down the road five years  
18 and it isn't even in the same planet, especially if  
19 fuel were to go back to three bucks (inaudible.)

20 MS. HOLMAN: But the other thing --

21 COMMISSIONER ROCKWELL: Those are the sort of  
22 things that I need to look at for the citizens.

23 MS. HOLMAN: Well, the other thing is when  
24 (inaudible) if we're going to continue this is that you  
25 have a tonnage cap. With a tonnage cap, you know,

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1 we're also concerned about legal loads that we have to  
2 issue with that. But on top of that, you know, with  
3 the additional tons comes probably additional routes.  
4 With additional routes you're going to have a fuel  
5 surcharge on top of that additional routes that happen.  
6 Not only that, but a fuel surcharge on the truck that's  
7 going to be taking it to, you know, Missoula plus the  
8 75 that you're getting charged on top of that for the  
9 tonnage that makes easy 4500. So also just added a  
10 whole bunch of other unknowns that could, you know,  
11 definitely go well above our price at the same time,  
12 too.

13 COMMISSIONER ROCKWELL: True.

14 MS. HOLMAN: And if it's something that you guys  
15 want to talk about we're more than willing, like I said  
16 before, to talk about the CPI. If you want to go back  
17 to it we just have to make sure that, you know, it's  
18 going to work over the next ten years.

19 COMMISSIONER ROCKWELL: One of the things on  
20 recycling, just for the record, he takes me on wildly  
21 about recycling and bias. So for the record recycling  
22 hasn't cost the county any money. And when we asked  
23 for a seven percent surcharge per ton, \$7 surcharge per  
24 ton on recycling in this letter Charney actually says  
25 you can dispose of garbage for \$75 a ton. And Simmons

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1 says that tonnage above 4500 is (inaudible.)  
2 MR. HOLMAN: I'm confused on what you said the  
3 first part about 75.  
4 COMMISSIONER ROCKWELL: \$75 a ton, page 4.  
5 MR. HOLMAN: That's just what he charges for  
6 extra tonnage.  
7 COMMISSIONER ROCKWELL: Okay. So I'm just  
8 talking extra tonnage is about 75 bucks a ton.  
9 MR. HOLMAN: That wouldn't be our number. For us  
10 if it was all in the dumpsters it would be in the two  
11 hundreds because it's in the system. At our transfer  
12 station if it was -- if it was inert waste ours at the  
13 transfer station is \$20 a ton. If it's solid waste, I  
14 think, we're around 90 something a ton. But in the  
15 dumpster system it's more up in the \$200 range.  
16 COMMISSIONER ROCKWELL: So I'm just saying that  
17 recycling (inaudible) is at seven bucks a ton, which is  
18 considerably less than any of the numbers you just  
19 mentioned.  
20 MS. HOLMAN: (Inaudible.)  
21 MR. HOLMAN: I'm not sure what you're saying.  
22 COMMISSIONER ROCKWELL: If you've got a ton of  
23 refuse and it gets recycled that's going to cost seven  
24 bucks, or you can do it for 75 -- not you two  
25 (inaudible) but 75 here. This is very, very cheap.

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1 It's no cost to you.

2 MR. HOLMAN: Recycling? We have to pay for it.

3 Let me give you an example of recycling.

4 COMMISSIONER ROCKWELL: It cost you \$200 to get

5 rid of a ton or the recyclers can do it for 75.

6 MR. HOLMAN: No. The whole problem with this is

7 the tonnage based contract. This area goes through a

8 boom, let's say. Let's say everyone here moves in.

9 I'm going to say it like this: Our contract is not

10 tonnage based. So our contract now our dumpsters are

11 overflowing, and we're trying to keep up because we've

12 said we're going to do it for 77, 87, 97, I don't care

13 what it is a month. We get that no matter what. We're

14 hauling all that extra garbage. Along with that people

15 are going to recycle more because the area is going

16 through a boom, and there's going to be ten times more

17 recycling. So now we get hit with recycling is going

18 to cost us, and on the other side of that we also get

19 hit because the dumpsters are all overflowing. Both of

20 them come up together. Your guys' premise is that we

21 only have X amount of garbage, and if the recyclers

22 pull out this much then we're going to go down, and it

23 doesn't work like that. It goes up together. It could

24 possibly work like that, but it's such an unknown.

25 That's not having a tonnage based contract. That's the

1 whole reason we had a problem with it the first time.  
2 It's not that we're against recycling. We actually  
3 want to offer some. But you guys in the recycling  
4 contract have everything specified can be recycled. So  
5 let's say you guys decide you want to start recycling  
6 appliances. They're heavy, and now all this tonnage is  
7 going in, and now we have to pay because you guys are  
8 recycling metal and taking it down to Armstrong, too.

9 COMMISSIONER BRANDT: I'm sorry, but when did you  
10 guys want to do a per ton contract?

11 MR. HOLMAN: We didn't. You guys did  
12 (inaudible.)

13 COMMISSIONER BRANDT: Right. Now you guys want  
14 to do it?

15 MR. HOLMAN: No. No.

16 MS. HOLMAN: (Inaudible) recycling -- recycling  
17 is a negative tonnage trigger. It is based on tonnage.  
18 When the contract isn't based on tonnage. The contract  
19 says (inaudible) best you can.

20 MR. HOLMAN: What Skip is asking -- we don't want  
21 to do a tonnage contract. I'm saying if you have to do  
22 a tonnage based then you have to -- both factors have  
23 to be the same to do a tonnage based contract. We have  
24 to have something that says, okay, if the recyclers  
25 have now pulled out ten tons, and our tonnage has now

1 gone down ten tons, that's an even wash right there,  
2 \$7, okay, that makes sense. But with us having a solid  
3 we have yet to have our tonnage go down with the  
4 recycling going on right now. It's not going down  
5 because of it. So we're getting double hit with it.  
6 We're getting hit when the tonnage is still up, and  
7 we'd be getting hit if we had to pay the recyclers on  
8 top of it.

9 MS. HOLMAN: And it shouldn't be us having to  
10 pay. It should be -- like if you did a tonnage based  
11 contract it would be like, okay, you pay us for what  
12 we're doing, and then if they're doing something with  
13 that tonnage then you pay that. As we (inaudible).

14 COMMISSIONER CHMELIK: I have a question.  
15 Robert, how do you see this? Because you agreed to --  
16 if it's verifiable numbers they can verify (inaudible)  
17 with the recycling they're taking out. How do you view  
18 it? (Inaudible.)

19 MR. SIMMONS: Well, we define recyclable  
20 materials to be including but not limited to cardboard,  
21 metal, aerosol cans, plastics and other substance of  
22 being reprocessed or reused. At the same time we  
23 retain the possibility -- we retain the right to also  
24 recycle at the same time if we choose to.

25 COMMISSIONER CHMELIK: Do you see what I guess

1 I'm saying is (inaudible) negative. Do you see it as a  
2 negative if they (inaudible) taking out ten tons a  
3 month.

4 MR. SIMMONS: No, because one thing that we put  
5 in there was literally that it has to be certified  
6 documentation. And, well, that's why we don't have a  
7 problem with that. It's like when we go to -- just  
8 like when they go to a landfill, we go to the landfill,  
9 when they give us our bill at the end of the month they  
10 don't write out a piece of paper, I think you had about  
11 this. It's a certified stamped document weight ticket,  
12 and that's what I'm expecting to see on the recycling  
13 end is numbers, actual printed numbers from one entity  
14 to the other of what they've recycled. That was what  
15 our view of it was, not the abouts, not I think it was  
16 this, or we had ten people come in and we had this much  
17 weight so we averaged it to this. We're expecting to  
18 see more of a very specific number from the different  
19 areas and broken up per town, per county and so forth.  
20 And that was what we felt was our protection from  
21 exactly what Patrick was saying was that they come in  
22 and January 1 they come in and say -- not saying they  
23 would, just saying that they come in and say we did  
24 300 tons this month. That's why we want it to be a  
25 certified document that says how much it was. We want

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1 it weighed, you know. It's going to be tough on them  
2 to get kind of some of that stuff done, but that was  
3 our protection in that.

4 MR. MACGREGOR: I had a question. I guess I'm  
5 confused when I read the evaluation of proposals you  
6 make it sound like we're doing something wrong by  
7 asking both of you questions when it says in here, the  
8 county may conduct interviews to discuss or clarify  
9 aspects of proposals with some or all proposers. I  
10 mean, that's what we did last time. We had questions  
11 for both of you at --

12 MR. HOLMAN: Had all the numbers been given at  
13 the time of the proposal -- had his number come in I'm  
14 77 base. This many gallons of fuel. This is what I  
15 see. Here is the tonnage cap. This is how much extra  
16 it could be over and all the numbers are there. If you  
17 guys want to ask questions and say, well, gees, I see  
18 you've got -- you're saying it's going to take  
19 350 gallons of fuel this month, and I know from Walco's  
20 they're (inaudible) at 700 gallons. You guys might  
21 have a question to make sure you're protected did he  
22 possibly miss something in that and going for  
23 clarification to make sure he has all of that. The  
24 problem is he didn't have any of those number in his  
25 bid and --

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1 MS. HOLMAN: (Inaudible) some or all of us. It's  
2 not saying that you can put us all (inaudible).

3 MR. MACGREGOR: It's not saying you can't do  
4 that. I mean, Charney's letter makes it sound like we  
5 were doing an illegal meeting last time, and I don't  
6 understand that. We were asking questions about  
7 proposals. That's what we're supposed to do. We're  
8 trying to fix something here.

9 MR. HOLMAN: Right. But you're picking someone  
10 after our whole complete number was given. There was  
11 no question. You said -- we were told we had an  
12 incomplete bid. But we have a bid that you have no  
13 questions on. You don't have to ask us, oh, did you  
14 think about these gallons that you put this in? And  
15 you have one bid that said a base price, that's it.  
16 All those other items that get added to that are a huge  
17 fluctuation of you can do what you want.

18 MR. MACGREGOR: But that's what we wanted to find  
19 out. That's why we said let's have this meeting today  
20 so we can find out (inaudible.)

21 MS. HOLMAN: It's after the fact. See, it says,  
22 preliminary. You had to do this like you guys --

23 MR. MACGREGOR: No, we didn't have to do this. I  
24 mean, I disagree. I respectfully disagree.

25 MR. HOLMAN: That's fine. We disagree with that.

1           MR. MACGREGOR: I mean, the proposals come in,  
2   and we have a right to talk to the proposers about it.  
3   I don't see any question about that.

4           MS. HOLMAN: You know, that's probably maybe for  
5   a court to decide necessarily of that part of it works.

6           MR. MACGREGOR: I mean, it's no brainer to me.

7           MS. HOLMAN: But last week in the meeting we felt  
8   that there was a huge discrimination between  
9   (inaudible) because ours was being just kind of like,  
10   okay, we don't like it. We don't like the format. We  
11   don't like what's in it, and no questions or no  
12   allowances for us to say, hey, okay, we'll change it  
13   back to the CPI, and we'll give you the fuel surcharge  
14   and we'll go back --

15          MR. MACGREGOR: (Inaudible.)

16          COMMISSIONER BRANDT: I've just got to -- my  
17   whole thought is give us the proposal. Propose  
18   whatever you want to propose. Your main thing is one  
19   sheet here. Yeah, you got the whole contract. But it  
20   is no longer recycling. You won't even go there.  
21   That's huge. You say all the consolidation costs will  
22   be reimbursed. You have the yearly five percent.  
23   Nothing here on this page says that this is open for  
24   negotiations at all. It's no, no, no, no. It's firm.

25          MR. HOLMAN: Isn't that what a proposal is

1 supposed to be?

2 COMMISSIONER BRANDT: Well --

3 MS. HOLMAN: (Inaudible) we were supposed to  
4 (inaudible.)

5 MR. HOLMAN: I thought you were supposed to have  
6 a number that you can -- had I known we could just put  
7 in -- I would have put in we'll do it for \$5 as a base  
8 rate, but all these are variables that we can get in  
9 negotiation. I used to do this for a living. I went  
10 to school for this. Our attorney went through this  
11 with us. It's not -- I don't get why ours that is --  
12 you have no questions on, we're getting questioned the  
13 most. That's what I don't get.

14 MS. HOLMAN: And it says that you guys are  
15 specifically going to base it on the qualifications and  
16 the criteria. It says, it will be based on the four  
17 categories provided. So if we're basing it on one  
18 sheet of paper and the fact that the whole time we were  
19 being told, it's incomplete. It's incomplete. It's  
20 kind of like, okay, tell us where it's incomplete. We  
21 didn't get that until Robert's was complete, but we're  
22 sitting here going, well, what about this, this, this,  
23 this, and this, and asking all these questions, and  
24 he's being able to just throw numbers whatever he wants  
25 at it at the time. And the fuel -- I'm sorry, but

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1 should have had it last Monday or Tuesday whenever you  
2 guys opened this up like that. So it's just a clear --  
3 to us just this isn't a fair bid process.

4 COMMISSIONER BRANDT: Well, throwing your numbers  
5 at Robert's I get just under \$86,000.

6 MS. HOLMAN: Well, you can't because we start in  
7 a different area. That's why (inaudible) 1820 gallons  
8 (inaudible) he's coming from Kamiah (inaudible.)

9 COMMISSIONER BRANDT: That's your number is 7900  
10 that's adding your (inaudible.)

11 MS. HOLMAN: No, he said 7900 on Monday -- or  
12 Tuesday (inaudible) that wasn't my (inaudible.)

13 MR. SIMMONS: No, I didn't say 79.

14 MS. HOLMAN: Yes.

15 MR. SIMMONS: I said I did not know.

16 MS. HOLMAN: (Inaudible).

17 MR. SIMMONS: I did not know. I said that I  
18 would come back.

19 UNKNOWN PERSON: It doesn't matter.

20 COMMISSIONER BRANDT: But when I called you --

21 MS. HOLMAN: Yes.

22 COMMISSIONER BRANDT: -- your input on this you  
23 told me 7900.

24 MS. HOLMAN: I said that's what Robert said. I  
25 told you (inaudible).

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1 UNKNOWN PERSON: (Inaudible.)

2 MS. HOLMAN: We have it on tape so just we can  
3 clarify.

4 MR. HOLMAN: Our number is going to also be  
5 different than his. We are in a different area than  
6 his.

7 COMMISSIONER BRANDT: Again, I think it's a  
8 proposal. I'm just head shy because of the previous  
9 history of inconsistency with Walco numbers again going  
10 back starting (inaudible) --

11 MR. HOLMAN: Inconsistency with us not wanting to  
12 lose money.

13 COMMISSIONER BRANDT: -- 2002. What is a ten  
14 year contract?

15 MR. HOLMAN: Wow, I can't believe you're saying  
16 that. You're saying you don't like us because our  
17 number went up.

18 COMMISSIONER BRANDT: (Inaudible) then.

19 MS. HOLMAN: (Inaudible) three years (inaudible.)

20 COMMISSIONER BRANDT: Again, after less than just  
21 within months ago, I mean, it's --

22 MS. HOLMAN: Well, just so you know you guys  
23 turned around after we fought the battle and Robert got  
24 to come in and go, oh, look, we'll just open our books  
25 up, and he got the same increase. The price is being

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1 paid for both areas for what he's getting per ton and  
2 what we are.

3 MR. HOLMAN: Look at what he used to get paid at  
4 that same time. It's the exact same thing.

5 MS. HOLMAN: So don't make it sound like we're  
6 the bad guys. We just did this (inaudible).

7 MR. HOLMAN: We're fighting for our contract  
8 right now. We're not going to lay over and say, oh,  
9 we're happy with everything. We're going to get every  
10 aspect of this, and I don't understand. It's not about  
11 that. It's about numbers, and what's best for the  
12 county.

13 MS. HOLMAN: (Inaudible) Sunshine would have  
14 thought it was a good deal they would have come down  
15 and bid it. I mean, it's --

16 COMMISSIONER BRANDT: I wish we could have just  
17 negotiated as we were doing a while back, but --  
18 Commissioners, do you have anything? Any questions?

19 COMMISSIONER CHMELIK: (Inaudible).

20 MR. MACGREGOR: Yeah, it's put in as -- we say  
21 that this is the proposed contract that we would expect  
22 to sign under these terms.

23 MS. HOLMAN: (Inaudible).

24 MR. MACGREGOR: We say, system proposal  
25 specifications in the title. Solid waste management

1 system proposal specifications. So that was what we  
2 were saying this is our proposal, and these are the  
3 terms that we are going to have. Of course, we didn't  
4 put --

5 MS. HOLMAN: Well, it doesn't say that  
6 (inaudible) below, that's the thing. Because it also  
7 says (inaudible) adopted by the county. So you're also  
8 saying (inaudible).

9 MR. MACGREGOR: Well, I think (inaudible) price  
10 is one we wanted to know. I mean, that wasn't set, you  
11 know. But, I mean, I do agree we had the system  
12 proposal specifications which talked about the area and  
13 the different terms and container size.

14 MS. HOLMAN: (Inaudible) solid waste management  
15 system. It doesn't say (inaudible) solid waste  
16 management (inaudible.)

17 MR. MACGREGOR: Well, it says, systems proposal  
18 (inaudible.)

19 MS. HOLMAN: No (inaudible.)

20 MR. MACGREGOR: I guess we can bicker over  
21 (inaudible.)

22 MR. HOLMAN: It doesn't really matter. It comes  
23 down to what you guys want and that's fine.

24 MR. MACGREGOR: One thing, too, I wanted to point  
25 out that it does say we have the right to negotiate.



1 If we do pick someone we have a right to negotiate. We  
2 can't -- we don't have to accept your proposal. You  
3 submit a bid, and then we look at it. We talk. We  
4 say, okay, we're going to try to work with you, and  
5 then if we can't work out the final terms then we go to  
6 the second proposal. So, I mean, we have a right to do  
7 that.

8 MS. HOLMAN: We're not saying that. It's just  
9 saying on all the stuff that you're saying you're  
10 basing it off of and comparatively, you know, what  
11 happened after the opening of the bids it's just not a  
12 fair bid process.

13 MR. MACGREGOR: Well, I mean, you make it sound  
14 like we didn't like your bid and all this. It's not  
15 that -- I don't think anyone said that.

16 MR. HOLMAN: He actually did. He said ours was  
17 incomplete, and his was complete. He said it -- and  
18 then he tried to get you to go in with apparent low  
19 bidder twice. That's why we're in here trying to point  
20 out the numbers is because you're going into  
21 negotiations with him now as apparent low bidder. So  
22 we're trying to show you that there's a discrepancy on  
23 that because once he's in in negotiations I imagine  
24 there's going to be negotiations where he comes down  
25 lower or does something different, as there probably

1 would be with us so it's --

2 MR. MACGREGOR: But that wasn't my understanding  
3 of having Robert come back today. My understanding was  
4 we hadn't decided who to pick. We wanted more  
5 information from him, which we have a right to do. I  
6 mean, that's what this is all about.

7 MS. HOLMAN: (Inaudible) past the point of  
8 (inaudible).

9 MR. MACGREGOR: I mean, I disagree.

10 MR. HOLMAN: So can we just tell you right now  
11 our bid is \$65,000, and there's a bunch of things in  
12 there that we can talk about at negotiations because  
13 that would put us in negotiations first. Ours was  
14 specific.

15 MR. MACGREGOR: I think you can. I think if you  
16 want to say that we can sit here and negotiate with  
17 whoever we want. Yeah, you can say that.

18 MR. HOLMAN: That sounds fair. Would that be  
19 fair to Robert?

20 COMMISSIONER ROCKWELL: (Inaudible) I think we  
21 should be in negotiations with the apparent low bidder.  
22 It's what we're supposed to do, and if it turns out  
23 (inaudible) negotiations and discussion it turns out  
24 he's not the low bidder, okay, then we have the right  
25 to go to the next bid who (inaudible).

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1           MR. MACGREGOR: We weren't sure if he was low was  
2 my understanding that's why we wanted to come back  
3 today. You guys were saying he was not the low, and we  
4 were listening to you.

5           MR. HOLMAN: That was after he wanted to go into  
6 negotiations with apparent low bidder. He made the  
7 motion twice.

8           COMMISSIONER ROCKWELL: I said apparent twice.

9           MR. HOLMAN: And went and raised the motion, and  
10 then after that you said (inaudible.)

11          MS. HOLMAN: It came back (inaudible) we were  
12 told that ours was incomplete, and we were trying to  
13 actually respect the bid process because (inaudible)  
14 for a living, and Dennis and everybody told us it's not  
15 fair for us to, you know, bargain with you with  
16 somebody else here because it's not fair (inaudible.)  
17 That came down to, okay, if there was clarifications  
18 that needed to be asked then we found them out, and it  
19 became that, okay, you know, for one as far as when it  
20 came down to the criteria you said you were basing it  
21 off of it seems like that's not what you guys  
22 technically are basing it off of. If it was then ours  
23 should have stood out from negotiations (inaudible)  
24 whether low or high on paper just a base price because  
25 it said cost of services.

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1 MR. MACGREGOR: I agree with Mr. Rockwell when he  
2 says the five percent cost of (inaudible). That's a  
3 huge -- like he says, you compound that every year, I  
4 mean, three or four years it's double the amount.

5 MS. HOLMAN: (Inaudible) read the things online  
6 (inaudible) statutes it says it has to be  
7 responsiveness, completeness and whatever. The  
8 completeness of Robert's bid failed in all sorts of  
9 areas. Ours should have been first on the format of  
10 whatever, and if you didn't like it when you were in  
11 contract negotiations with us, then Robert's could have  
12 come into play, but should have been disqualified from  
13 the beginning for the incompleteness and the  
14 unresponsiveness that he's actually requested for you  
15 guys on your criteria that you said you will be basing  
16 it off of. Not shall, may or anything, it says, you  
17 will base them off of. So whether our number was liked  
18 at the beginning on a piece of paper or just on the  
19 sidelines when it came to the whole bid in its whole,  
20 and that's what it's supposed to be based off of, ours  
21 should have been first in negotiation, and then  
22 Robert's follow.

23 MR. MACGREGOR: The very first paragraph says the  
24 county may conduct the evaluation process as follows:  
25 That whole -- everything there under is may. We were

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1 not bound -- this was a guideline. We're not bound to  
2 follow that word-for-word.

3 MS. HOLMAN: That's in the (inaudible) evaluation  
4 criteria set up (inaudible). So it can't be may in one  
5 part and may -- or, you know, in the second part. A  
6 says that's how you would do it when you open them if  
7 you want to open them and ask for more information.  
8 When you go to how you're evaluating them and you say  
9 that you will be basing them off of these four  
10 categories, then I'm not going to think the (inaudible)  
11 may fall down into section B. They're two separate  
12 sections.

13 MR. MACGREGOR: Well, one of the evaluation  
14 criteria is the cost, I mean, (inaudible.)

15 MS. HOLMAN: (Inaudible) specifically for the  
16 modified and unmodified system.

17 MR. MACGREGOR: But I'm assuming you would agree  
18 that was the most important factor of the bid was the  
19 cost.

20 MS. HOLMAN: But for -- it asked for modified and  
21 unmodified systems. You only received an unmodified  
22 system from Simmons Sanitation. Again, omissions  
23 being -- or, you know, lacking -- his is lacking. Ours  
24 is in completeness and everything there. Might not be  
25 the number you want or were looking at first, but when

1 it came to what you said you were going to base it off  
2 of and how you were going to look at it --

3 MR. HOLMAN: Everything is answered.

4 MS. HOLMAN: -- everything is answered.

5 COMMISSIONER ROCKWELL: The five percent,  
6 Marietta, over a 10 year period is an increase up to  
7 \$141,000 in 10 year contact. That would be your base,  
8 the 141,000. So we moved from 87,000 to 141,000 on a  
9 five percent required increase. That for me looking at  
10 the numbers is a very tough number to get over. It's  
11 60,000 more than what we're looking at today.

12 MS. HOLMAN: That was the proposal. When you're  
13 looking at proposals it's (inaudible) you're looking at  
14 the one that doesn't have as much information  
15 (inaudible) that one is better.

16 COMMISSIONER ROCKWELL: I'm just asking the  
17 number. It's a \$75,000 increase.

18 MS. HOLMAN: Yes, and it's negotiable. Contract  
19 negotiations (inaudible) contract negotiations  
20 (inaudible.)

21 COMMISSIONER ROCKWELL: 54,000.

22 MR. HOLMAN: We tried to package something that  
23 gave you an exact number you'd be paying. Obviously  
24 either of us go into negotiation that's something that  
25 we're probably going to hammer out. Maybe you guys

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1 hate that number all together, but that was something  
2 to cover everything in this bid so you guys had a  
3 complete number on what we were doing, because  
4 everything is a variable. Eight to 12 sites is a  
5 variable. If we have less tonnage it's a variable on  
6 fuel because if all the sudden we go to consolidation,  
7 and you guys are very aggressive on people can't do  
8 this, people can't do that either contractor is hauling  
9 less, our gallons are going to come down. There's no  
10 way to put a number to that with the way this is set up  
11 right now. There's absolutely no way to put a solid  
12 number that could have been in the bid. We tried to  
13 come up with a way that was solid, and it was actual  
14 number that could reach or wrap your head around.

15 MS. HOLMAN: But aside from that even (inaudible)  
16 the proposals you have to look at the completeness of  
17 it. You might not like how it's set up, but we should  
18 have well won -- because the disqualification on some  
19 of the things that weren't even provided in Simmons  
20 Sanitation (inaudible) bid process. When you go down  
21 and you go to a construction, you know, bid process and  
22 things aren't in there.

23 COMMISSIONER CHMELIK: I'm a little confused  
24 (inaudible) things not provided (inaudible) Simmons  
25 Sanitation. They have a fuel surcharge we know we're

1 going to have to pay. As educated people up here and  
2 all businessmen, I think we can discern through what  
3 we've been paying for surcharges based on what Robert  
4 is paying, what you guys are paying, and we can come up  
5 with a reasonable number. Robert presented a number.  
6 You presented a number. Heck, I think if we took all  
7 those and put them in just an average maybe we'd have a  
8 number to work with that their contract wasn't  
9 (inaudible) it was different, but it wasn't incomplete.  
10 He tells us he won't go over (inaudible) it's going to  
11 be anything over 4500 tons we can discern off of that  
12 number. And I think Commissioner Brandt has done a  
13 good job with discerning these numbers and still come  
14 up with the numbers less than \$87,000, and I think all  
15 those things are open for opinion, I guess, is what it  
16 comes down to, and where we go from here is based on --

17 MS. HOLMAN: Yeah, but it lacks (inaudible.)

18 COMMISSIONER CHMELIK: What's that?

19 MS. HOLMAN: It lacks the modified system that  
20 you guys critically asked for, and the criteria you  
21 said will be based off of, not only all the other  
22 information (inaudible) and records, things like that.

23 COMMISSIONER BRANDT: Marietta, (inaudible)  
24 modified system in your proposal you say we pick up the  
25 full burden of that. So that basically what Robert is



1 saying other than he owned --

2 MS. HOLMAN: He says he'll discuss it.

3 MR. HOLMAN: It doesn't say anything about that  
4 he's going to do it.

5 COMMISSIONER BRANDT: Worst scenario --

6 (End of third recording.)

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CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he  
correctly and accurately transcribed and typed the foregoing  
transcript from the TAPE RECORDING of the meeting which  
was RECORDED in the above-entitled action or proceeding.

Dated this 11th day of August, 2013.

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Keith M. Evans, RPR, CSR NO. 655  
Court Reporter

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[38] 9/11 9/13 9/16 9/21 11/1 12/22 13/16 16/9 17/7 24/16 25/22</p>	<p>31/24 31/24 32/3 32/5 32/8 32/9 32/13 33/17 34/2 34/10 34/14 40/22 42/3 42/ 42/10 44/19 49/24 53/12 53/18 53/22 60/14 60/20 62/21 63/16 68/3 76/11 76/13 transport [1] 61/21 transportation [1] 25/20 trash [1] 47/8 travel [1] 32/14 traveling [1] 17/16 tried [8] 16/16 21/17 71/11 71/22 71/25 89/18 94/22 95/12 trigger [1] 78/17 trip [3] 16/22 17/2 54/23 triple [1] 39/12 trips [1] 19/14 truck [5] 10/15 15/6 17/3 17/17 75/6 trucking [2] 15/3 33/9 truckload [1] 11/4 trucks [7] 26/13 53/22 54/17 54/21 59/14 61/4 61/25 true [7] 30/24 45/7 45/8 45/9 45/21 66/25 75/13 try [10] 22/5 37/23 43/13 49/18 51/3 58/19 64/3 64/16 71/12 89/4 trying [19] 7/9 29/25 34/4 34/15 48/21 48/23 49/13 49/14 52/8 52/20 52/21 56/13 73/13 73/21 77/11 82/8 89/19 89/22 91/12 Tuesday [3] 63/5 85/1 85/12 turn [2] 18/25 36/21 turned [1] 86/23 turning [1] 51/6 turns [2] 90/22 90/23 twice [4] 21/4 89/19 91/7 91/8 two [17] 19/13 19/14 19/15 25/11 30/24 30/25 48/1 50/22 51/9 54/1 55/5 72/11 72/13 72/21 76/10 76/24 93/11 two percent [2] 72/11 72/21 type [2] 54/9 61/8 typed [1] 98/3</p> <p>U</p> <p>umbrella [1] 11/10 unbiased [1] 62/8 under [5] 50/23 55/15 85/5 87/22 92/25 undersigned [1] 98/2 undersold [1] 23/1 understand [9] 13/10 34/12 35/17 39/24 44/1 65/3 69/21 82/6 87/10 understanding [4] 52/18 90/2 90/3 91/2 unfair [3] 62/17 62/23 68/18 unknown [3] 38/17 65/9 77/24 unknowns [1] 75/10 unless [5] 11/19 13/18 15/13 38/16 57/2 unmodified [6] 48/11 69/19 72/6 93/16 93/21 93/21 unresponsiveness [1] 92/14 unsuccessful [1] 30/6 until [6] 9/24 29/23 57/17 67/2 72/6 84/21 up [63] 3/6 7/17 8/10 8/13 9/13 9/18 11/9 11/13 13/5 13/6 17/6 17/17 20/7 20/12 24/19 25/25 26/16 32/16 32/25 33/2 36/22 37/1 37/2 42/21 43/3 43/22 44/20 44/22 48/19 49/6 49/12 50/20 53/13 53/16 55/10 57/6 57/11 57/17 58/22 60/19 61/21 66/9 73/5 73/6 73/15 76/15 77/11 77/20 77/23 79/6 80/19 85/2 86/17 86/25 93/4 94/6 95/10 95/13 95/17 96/1 96/4 96/14 96/24 upon [1] 23/19 upper [1] 24/13</p>	<p>driver [1] 18/19 poststanding [1] 65/6 us [77] 3/14 7/21 11/2 12/1 12/3 13/8 18/11 18/15 19/18 21/14 21/15 23/4 24/15 24/15 25/1 25/2 25/8 26/4 29/3 29/22 31/25 32/22 33/4 33/5 33/7 33/8 34/25 35/9 38/17 39/25 47/9 47/13 49/16 55/20 55/25 57/9 57/18 58/1 59/8 59/19 60/3 60/9 62/12 62/23 63/21 64/15 66/3 66/12 67/7 67/13 68/4 68/11 68/14 71/5 76/9 77/18 79/2 79/9 79/11 80/9 82/1 82/2 82/13 83/12 83/17 84/11 84/20 85/3 86/11 86/16 90/1 90/13 91/14 91/15 92/11 94/24 96/10 us at [1] 68/14 use [7] 6/10 9/21 17/7 27/6 32/7 35/19 74/2 used [7] 9/16 28/17 38/11 61/9 71/25 84/9 87/3 using [9] 6/7 25/22 33/5 41/23 42/1 42/3 49/9 57/8 59/24 usual [1] 32/1 Usually [1] 48/7</p> <p>V</p> <p>vague [1] 2/14 Valley [2] 3/6 43/1 variable [3] 95/4 95/5 95/5 variables [1] 84/8 verifiable [1] 79/16 verify [1] 79/16 versa [1] 25/7 version [1] 71/25 versus [4] 7/2 43/3 43/21 69/6 very [10] 11/20 18/6 26/16 69/17 76/25 76/25 80/18 92/23 94/10 95/7 vice [1] 25/7 vice-versa [1] 25/7 view [2] 79/17 80/15 visit [2] 47/9 47/10 volatile [1] 7/18 volume [3] 13/2 13/3 13/7</p> <p>W</p> <p>Wait [1] 36/16 Walco [23] 2/14 4/24 5/2 9/13 10/3 18/11 18/15 30/8 30/11 30/20 32/23 38/1 40/24 45/6 45/10 45/14 45/17 45/19 46/2 59/25 60/10 68/22 86/9 Walco's [2] 32/24 81/19 want [67] 5/18 12/2 14/21 14/22 15/13 16/14 19/12 19/22 21/24 22/22 24/9 25/3 26/1 26/2 26/22 30/19 34/24 35/3 35/14 36/2 36/25 37/1 37/2 37/2 38/1 38/25 39/1 39/22 39/24 43/11 43/14 47/13 48/6 49/25 52/22 54/3 54/4 56/16 60/11 61/2 62/13 62/14 62/15 67/23 70/11 70/12 70/12 71/18 73/8 73/11 75/15 75/16 78/3 78/5 78/10 78/13 78/20 80/24 80/25 81/17 82/17 83/18 88/23 90/16 90/17 93/7 93/25 wanted [24] 20/1 20/14 22/16 23/4 23/5 23/5 23/20 34/22 50/20 52/12 56/9 63/4 63/6 64/21 64/22 67/17 69/25 70/9 82/18 88/10 88/24 90/4 91/2 91/5 wanting [4] 12/7 33/6 52/24 86/11 wants [4] 65/10 65/13 65/14 84/24 warning [1] 55/21 was [126] wash [1] 79/1 wasn't [15] 5/6 6/15 20/20 29/8 38/7 49/3 57/7 59/9 69/11 71/12 85/12 88/10 90/2 96/8 96/9</p>
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W		
<p>waste [11] 11/22 15/1 18/14 43/1 53/15 61/8 76/12 76/13 87/25 88/14 88/15 way [38] 8/11 9/21 10/9 10/21 11/8 12/16 15/7 15/18 17/6 17/8 20/4 21/20 23/6 23/7 23/8 23/11 23/21 24/3 24/11 25/12 26/22 39/5 40/11 51/2 51/13 51/18 53/16 59/17 59/18 61/12 71/4 72/12 73/13 73/14 95/10 95/10 95/11 95/13 ways [2] 64/1 68/6 we [529] we'd [5] 20/17 61/5 72/20 79/7 96/7 we'll [13] 11/3 11/4 35/22 37/11 37/22 37/23 50/9 62/4 83/12 83/13 83/14 84/7 86/24 we're [120] we've [21] 9/6 16/21 16/22 18/11 20/10 20/11 20/12 20/12 20/13 28/23 34/7 42/22 46/5 47/12 51/22 52/10 52/11 60/13 66/15 77/11 96/3 week [16] 19/11 35/6 35/6 35/12 38/13 40/2 47/22 55/17 55/19 55/19 60/25 62/9 64/21 68/8 70/6 83/7 weekdays [1] 34/17 weigh [1] 10/11 weighed [1] 81/1 weight [2] 80/11 80/17 well [40] 2/12 6/2 10/20 13/20 25/5 25/10 26/7 27/24 31/5 35/21 36/7 42/5 46/7 46/9 46/17 52/3 53/6 63/4 67/25 68/9 68/15 70/21 72/12 74/13 74/23 75/11 79/19 80/6 81/17 84/2 84/22 85/4 85/6 86/22 88/5 88/9 88/17 89/13 93/13 95/18 went [13] 3/14 6/20 20/17 22/13 44/17 49/3 50/2 50/15 50/19 84/9 84/10 86/17 91/9 were [74] 2/6 5/11 6/1 6/7 7/19 7/24 10/3 13/20 17/23 18/2 18/6 19/23 20/3 20/14 22/6 22/17 22/18 22/20 22/21 25/22 28/23 28/25 29/12 29/25 31/5 39/11 43/13 50/4 50/4 50/10 50/23 53/7 54/6 56/17 57/23 57/24 58/10 59/1 59/13 59/18 62/9 62/11 63/10 63/12 63/13 64/21 66/24 68/24 71/22 72/19 73/8 73/14 73/21 73/22 74/19 82/5 82/6 82/11 84/3 84/5 84/18 87/17 88/2 91/3 91/4 91/11 91/12 91/20 92/10 92/25 93/25 94/1 94/2 95/3 weren't [8] 20/2 22/19 22/20 39/11 50/14 59/5 91/1 95/19 what [160] what's [5] 5/6 12/8 83/11 87/11 96/18 whatever [11] 6/16 18/9 25/2 47/13 65/10 65/13 65/14 83/18 84/24 92/7 92/10 whatnot [2] 50/17 66/7 when [65] 5/20 6/24 7/5 7/10 11/12 11/14 15/20 15/21 16/6 16/19 17/1 17/18 19/10 19/15 19/22 20/3 21/12 22/6 22/15 22/17 22/18 23/17 23/23 30/14 49/7 50/2 50/18 50/21 51/9 52/11 53/16 54/1 54/6 55/6 57/15 61/23 62/19 64/21 65/24 69/17 70/4 70/21 71/8 72/15 74/16 74/23 75/22 78/9 78/18 79/6 80/7 80/8 80/9 81/5 81/7 85/20 91/19 92/1 92/10 92/19 93/6 93/8 93/25 94/12 95/20 whenever [1] 85/1 where [34] 8/1 14/21 16/13 18/4 18/5 18/9 18/12 18/16 22/5 28/8 29/5 34/11</p>	<p>34/12 34/25 35/1 40/13 47/8 49/1 50/2/ 50/21 55/8 57/6 57/12 58/12 59/2 59/2/ 60/14 62/15 65/7 67/22 70/23 84/20 89/24 96/16 whether [3] 18/15 91/24 92/17 which [19] 14/14 17/2 18/25 23/15 27/14 30/11 35/25 48/3 48/21 49/12 51/8 53/13 71/8 73/1 73/2 76/17 88/12 90/5 98/4 while [1] 87/17 white [1] 35/4 Whitebird [2] 16/18 16/18 who [6] 3/2 9/15 69/9 72/18 90/4 90/25 who's [1] 3/12 whoever [1] 90/17 whole [21] 27/7 34/1 51/4 54/5 56/23 62/17 62/19 65/4 67/11 70/5 71/3 75/10 77/6 78/1 82/10 83/17 83/19 84/18 92/19 92/19 92/25 whose [1] 28/3 why [18] 3/18 13/12 21/10 24/11 35/17 45/19 46/2 55/5 56/10 57/8 62/25 80/6 80/24 82/19 84/11 85/7 89/19 91/2 wide [1] 23/14 wildly [1] 75/20 will [29] 5/16 11/4 17/19 18/22 18/24 18/25 21/15 25/25 32/11 35/24 35/25 36/16 37/15 39/5 40/1 40/24 40/25 41/3 41/4 60/15 60/15 64/13 69/14 83/21 84/16 92/15 92/17 93/9 96/21 willing [5] 28/20 32/17 71/9 73/8 75/15 win [1] 43/5 wish [2] 27/10 87/16 wit [1] 2/6 within [1] 86/21 without [8] 11/10 31/21 34/25 54/23 55/9 58/4 62/5 66/12 won [1] 95/18 won't [3] 55/8 83/20 96/10 wondering [1] 13/20 word [3] 28/11 93/2 93/2 word-for-word [1] 93/2 work [25] 5/8 5/8 6/17 8/4 9/5 10/4 19/2 20/13 21/19 29/8 29/10 38/8 39/1 39/8 39/12 51/3 58/12 61/23 71/4 75/18 77/23 77/24 89/4 89/5 96/8 works [3] 7/14 23/24 83/5 Worst [1] 97/5 worth [1] 41/14 would [67] 5/7 7/25 9/25 10/1 10/4 10/18 11/14 12/4 13/1 14/5 16/17 16/23 18/7 18/15 23/6 27/5 27/10 31/6 31/8 31/20 33/8 33/9 33/13 33/24 34/16 35/5 35/17 36/2 37/21 38/15 38/17 39/2 41/10 41/24 41/25 42/2 42/3 43/20 47/11 48/3 48/4 50/1 58/5 58/19 61/18 66/8 66/9 67/21 68/21 68/21 68/24 71/4 72/22 76/10 79/11 80/23 84/7 85/18 87/13 87/14 87/21 90/1 90/13 90/18 93/6 93/17 94/7 wouldn't [8] 5/12 15/23 15/24 19/23 21/2 21/18 57/11 76/9 Wow [1] 86/15 wrap [1] 95/14 write [2] 25/9 80/10 writing [2] 20/17 23/5 written [1] 39/5 wrong [1] 81/6 wrote [1] 57/10</p>	<p>14/4 28/21 29/5 35/24 36/25 40/8 40/17 41/2 41/6 41/9 41/13 42/12 42/18 44/13 47/4 50/6 50/12 71/15 83/19 87/20 90/17 96/17 year [31] 5/1 7/6 7/7 7/22 13/1 8 14/1 38/2 45/16 45/19 47/17 49/10 50/22 53/3 54/8 56/18 56/18 57/15 59/24 60/1 72/13 72/16 72/22 72/23 72/24 73/16 74/7 74/12 86/14 92/3 94/6 94/7 yearly [1] 83/22 years [22] 9/6 14/22 18/12 20/6 33/6 34/8 42/23 46/6 46/8 49/2 50/1 2 50/22 53/25 55/4 56/7 56/8 61/1 74/1 4 74/17 75/18 86/19 92/4 yes [19] 4/12 8/17 8/17 8/20 12/18 12/24 16/1 19/6 19/16 23/9 23/25 37/19 38/24 53/10 54/3 66/18 85/14 85/21 94/18 yet [5] 36/10 63/15 67/20 74/1 1 79/3 you [443] you'd [1] 94/23 you'll [2] 27/25 71/7 you're [55] 9/15 14/11 14/14 15/5 15/5 15/8 15/9 17/22 18/17 19/13 22/1 22/11 26/3 26/20 27/22 28/6 28/11 28/20 29/6 29/10 35/2 36/12 41/17 41/17 43/16 44/6 52/15 52/19 53/1 53/6 59/2 61/17 62/16 63/14 67/12 67/23 70/4 70/13 73/12 74/15 75/4 75/8 76/21 81/18 81/21 82/9 86/15 86/16 88/7 89/9 89/9 89/20 93/8 94/12 94/13 you've [4] 6/3 51/20 76/22 81/1 8 your [48] 6/15 6/16 7/2 8/18 12/20 14/14 15/2 15/6 15/23 17/19 19/5 21/15 21/23 22/3 22/11 24/21 25/1 28/14 29/9 34/5 39/8 46/8 49/8 49/9 52/3 52/25 57/16 64/23 64/24 67/21 67/24 68/20 68/20 69/4 72/16 73/13 77/20 83/18 85/4 85/9 85/10 85/22 89/2 89/14 92/15 94/7 95/14 96/24 yours [2] 56/13 56/18 yourself [1] 32/2</p>
	<p>Y</p> <p>yards [3] 19/11 19/12 19/16 yeah [28] 3/4 3/16 4/3 5/18 9/1 11/16</p>	<p>Z</p> <p>zero [1] 49/14</p>

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

COURT MINUTES

Presiding Judge  
JOHN R. STEGNER  
Reporter  
LINDA CARLTON  
Date Dec 20, 2013  
Time 10:00 A.M.  
Court Room #1 Nez Perce County, Lewiston

WALCO, INC, an Idaho corporation,	)	
	)	Idaho Co Case No CV13-42360
Plaintiff,	)	APPEARANCES:
	)	Plaintiff: Dennis M. Charney
v.	)	
	)	Defendant, Idaho County
COUNTY OF IDAHO a political	)	Bentley Stromberg
Subdivision of the State of Idaho;	)	Joshua McKarcher
	)	
and	)	Defendant Simmons Sanitation
	)	David Risley
SIMMONS SANITATION SERVICE,	)	
INC., an Idaho corporation,	)	
	)	

SUBJECT OF PROCEEDINGS: Motion for Summary Judgment

100050 Parties present in Lewiston for cross motions for summary judgment.

100133 Mr. Stromberg presents argument.

101226 Mr. Risley presents argument.

1 Page of 2 Pages

COURT MINUTES

1723



101650 Crt q Mr. Risley.

Mr. Risley responds. Mr. Risley continues argument.

102655 Mr. Charney presents argument.

104940 Mr. Stromberg presents rebuttal argument.

105235 Mr. Risley presents rebuttal argument.

105432 Mr. Charney presents rebuttal argument.

105521 Crt relays under these facts the court is not persuaded to send this case to a jury.  
Crt grants Defendants' motions for summary judgment.

Crt relays the bid does not meet the trade secret requirements under the statute, plaintiff did not do what was needed to do to preserve a trade secret and defendants provided enough for estoppel.

Crt is presenting this oral ruling based on the fact that the case is set for jury trial in Feb.  
Crt presents comments. Crt will reduce this into a written decision.

105808 Counsel have nothing further.


105831 Recess

JANET KOUGH

Deputy Clerk

APPROVED:

2      Page of      2      Pages

  
\_\_\_\_\_  
Presiding Judge

DENNIS M. CHARNEY ISB# 4610  
 CHARNEY AND ASSOCIATES, PLLC  
 1191 East Iron Eagle Dr., Ste. #200  
 Eagle, ID 83616  
 Telephone: (208) 246-8850  
 Facsimile: (208) 938-9504

Attorney for Plaintiff

IDAHO COUNTY DISTRICT COURT  
 AT 2:24 FILED  
 O'CLOCK P.M.

JAN - 3 2014

KATHY M. ACKERMAN  
 CLERK OF DISTRICT COURT  
 DEPUTY

DOCKETED

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO**

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
 of the State of Idaho, and

SIMMONS SANITATION SERVICE, INC.,  
 an Idaho corporation,

Defendants.

Case No. CV 42360

**NOTICE OF HEARING w/ NOTICE OF  
 PROCEDURES FOR TELEPHONIC  
 APPEARANCES REGARDING  
 COURT CALL**

**TO: Defendants, COUNTY OF IDAHO and  
 SIMMONS SANITATION SERVICE, INC.:**

PLEASE TAKE NOTICE that Plaintiff will call up for hearing Plaintiff's Motion to Reconsider before the Honorable John R. Stegner on Tuesday, the 21st day of January at 10:30 a.m. Pacific Standard Time (11:30 a.m. Mountain Standard Time). The Court has agreed that all parties may appear in person or may register and appear via CourtCall. To register with CourtCall, call 1-888-882-6878 and see the following instructions:

**PLAINTIFF'S NOTICE OF HEARING- 1**

**NOTICE OF PROCEDURES FOR TELEPHONIC APPEARANCES**

Please take notice that any person desiring to appear via telephone at the Telephonic Status Conference set for CourtCall ID# 5867532, CV42360, WALCO, INC., v. County of Idaho, ETAL on Tuesday, January 21st, 2014 at 10:30 a.m. Pacific Standard Time before the Honorable Judge Stegner, at the Idaho County Courthouse, in Grangeville, Idaho should proceed as follows:

1. Contact CourtCall at (888) 882-6878 not later than 3:00 p.m. the day before the hearing.
2. Five minutes before the hearing start time, participants dial the toll-free conference number which will be provided in the Confirmation that CourtCall will send to you. CourtCall does not call the participant.
3. It is your responsibility to dial into the call not later than 10 minutes prior to the scheduled hearing. CourtCall does not call you.
4. CourtCall discourages the use of cell phones or speakerphones. Please put your telephone on mute when not speaking.
5. Each time you speak, you must identify yourself for the record.
6. You have the option to appear in court even if the other party(s) appear by phone.

DATED this 2nd day of January, 2014.



---

DENNIS M. CHARNEY  
Attorney for the Plaintiff

PLAINTIFF'S NOTICE OF HEARING- 2

CERTIFICATE OF SERVICE

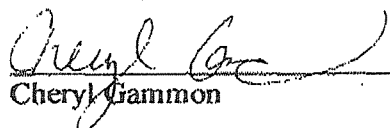
I HEREBY CERTIFY that on this 2nd day of January, 2014, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

David Risley  
RISLEY LAW OFFICE, PLLC  
P.O. Box 1247  
1443 Idaho Street  
Lewiston, ID 83501  
208-743-5338

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

Bentley G. Stromberg  
CLEMENTS, BROWN & McNICHOLS, PA  
321 13th Street  
Lewiston, ID 83501  
(208) 743-6538

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
Cheryl Grammon

PLAINTIFF'S NOTICE OF HEARING- 3